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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MIGUEL CASTRO-GOMEZ,

Petitioner,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 09-70584

Agency No. A079-540-872

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted March 8, 2011**

Before: FARRIS, LEAVY, and BYBEE, Circuit Judges.

Miguel Castro-Gomez, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' ("BIA") order denying his motion to reopen removal proceedings. We have jurisdiction under 8 U.S.C. § 1252. We review for

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

abuse of discretion the denial of a motion to reopen, *Iturribarria v. INS*, 321 F.3d 889, 894 (9th Cir. 2003), and we deny the petition for review.

The BIA acted within its discretion in denying as untimely Castro-Gomez's motion to reopen because the motion was filed more than four years after the BIA's final order of removal, *see* 8 C.F.R. § 1003.2(c)(2), and Castro-Gomez did not establish that he acted with the due diligence required for equitable tolling of the time limitation, *see Iturribarria*, 321 F.3d at 897; *see also Singh v. INS*, 213 F.3d 1050, 1054 n.8 (9th Cir. 2000) (statements in motions are not evidence and are therefore not entitled to evidentiary weight).

PETITION FOR REVIEW DENIED.