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U.S. COURT OF APPEALS

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

IDANIA MAYBELI ROSALES-PICEN,

Petitioner,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 07-72562

Agency No. A076-680-122

MEMORANDUM*

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

Argued and Submitted March 18, 2011
San Francisco, California

Before: WALLACE, NOONAN, and CLIFTON, Circuit Judges.

Idania Rosales-Picen (“Rosales-Picen”) petitions for review of a decision of the Board of Immigration Appeals (“BIA”) denying her motion to reopen removal proceedings based on ineffective assistance of counsel. We have jurisdiction under 8 U.S.C. § 1252.

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-311.

We review ineffective assistance of counsel claims de novo and findings of fact regarding counsel's performance for substantial evidence. *Lin v. Ashcroft*, 377 F.3d 1014, 1024 (9th Cir. 2004). Ineffective assistance of counsel claims require a showing of prejudice to succeed. *Id.* Upon review of the record, we conclude that Rosales-Picen did not demonstrate prejudice arising out of prior counsel's failure properly to investigate and present Rosales-Picen's asylum claim based on her fear of persecution by the guerrillas in Guatemala. The new evidence Rosales-Picen offered in support of her motion to reopen does not undermine the agency's prior conclusions that (1) Rosales-Picen did not establish past persecution, and (2) Rosales-Picen failed to prove that she could not reasonably relocate to a place within Guatemala where she would be safe from the guerrillas.

Substantial evidence supports the BIA's finding that "it was not clear that a claim based on domestic violence [was] sustainable in 1999." Accordingly, the BIA did not err when it concluded that prior counsel Miguel Gadda's failure to present a domestic-violence based asylum claim in 1999 did not amount to ineffective assistance.

The petition for review is **DENIED**.