FILED

APR 12 2011

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

GLORIA MENDOZA ESPINOZA; et al.,	No. 09-71067
Petitioners,	Agency Nos. A095-315-334 A095-315-335
v.	
ERIC H. HOLDER, Jr., Attorney General,	MEMORANDUM*
Respondent.	

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

Submitted April 5, 2011**

Before: B. FLETCHER, CLIFTON, and BEA, Circuit Judges.

Gloria Mendoza Espinoza and her daughter, natives and citizens of Mexico, petition for review of the Board of Immigration Appeals' ("BIA") order denying their motion to reopen. We have jurisdiction under 8 U.S.C. § 1252. We review

---

* 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).

for 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 did not abuse its discretion in denying petitioners' April 21, 2008, motion to reopen as untimely because it was filed almost four years after the BIA's May 27, 2004, final order of removal, *see* 8 U.S.C. § 1229a(c)(7)(C)(i), and petitioners did not establish the due diligence required for equitable tolling, *see Iturribarria*, 321 F.3d at 897 (deadline for filing motion to reopen can be equitably tolled "when a petitioner is prevented from filing because of deception, fraud, or error, as long as the petitioner acts with due diligence in discovering the deception, fraud, or error").

Because the BIA did not abuse its discretion in denying the motion as untimely, we do not reach petitioners' contentions regarding the underlying merits of the motion to reopen.

PETITION FOR REVIEW DENIED.