

APR 14 2011

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ANTONIO SANTIAGO PENALOZA;
ESMERALDA NUNEZ BENITEZ
SANTIAGO, a.k.a. Esmeralda Santiago
Nunez, a.k.a. Esmeralda Nunez Beniez
Santiago,

Petitioners,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 09-71251

Agency Nos. A075-653-689
A075-653-698

MEMORANDUM*

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.

Antonio Santiago Penaloza and Esmeralda Nunez Benitez Santiago, natives
and citizens of Mexico, petition for review of the Board of Immigration Appeals'

* 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).

(“BIA”) order denying their motion to reopen or reissue based on ineffective assistance of counsel. We have jurisdiction under 8 U.S.C. § 1252. We review for abuse of discretion the BIA’s denial of a motion to reopen, *Hernandez-Velasquez v. Holder*, 611 F.3d 1073, 1077 (9th Cir. 2010), and we deny the petition for review.

The BIA did not abuse its discretion in denying petitioners’ motion as untimely where they filed the motion more than seven years after the final order of removal, *see* 8 C.F.R. § 1003.2(c)(2), and they failed to establish the due diligence required for equitable tolling of the filing deadline, *see Iturribarria v. INS*, 321 F.3d 889, 897 (9th Cir. 2003).

In light of our disposition, we need not reach petitioners’ remaining contentions.

PETITION FOR REVIEW DENIED.