

JUN 28 2011

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

| |
|---|
| <p>ANTHONY MICHAEL JEX; GILDA MAE MIDDLETON,</p> <p style="text-align: center;">Petitioners,</p> <p style="text-align: center;">v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p style="text-align: center;">Respondent.</p> |
|---|

No. 09-74038

Agency Nos. A075-683-134
A075-683-135

MEMORANDUM*

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

Submitted June 15, 2011**

Before: CANBY, O’SCANNLAIN, and FISHER, Circuit Judges.

Anthony Michael Jex and Gilda Mae Middleton, natives and citizens of Belize, petition for review of the Board of Immigration Appeals’ (“BIA”) order denying their motion to reopen removal proceedings. Our jurisdiction is governed by 8 U.S.C. § 1252. We review for abuse of discretion the denial of a motion to

* 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).

reopen. *Iturribarria v. INS*, 321 F.3d 889, 894 (9th Cir. 2003). We deny in part and dismiss in part the petition for review.

The BIA did not abuse its discretion in denying petitioners' motion to reopen as untimely where they filed the motion more than four years after the final order of removal, *see* 8 C.F.R. § 1003.2(c)(2), and they failed to establish they acted with the due diligence required for equitable tolling of the filing deadline, *see Iturribarria*, 321 F.3d at 897.

We lack jurisdiction to review petitioners' contention that the BIA should have invoked its sua sponte authority to reopen their proceedings. *See Mejia-Hernandez v. Holder*, 633 F.3d 818, 821 (9th Cir. 2011).

Petitioners' remaining contentions are unpersuasive.

PETITION FOR REVIEW DENIED in part; DISMISSED in part.