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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>ANASTASIYA UZZHINA,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p>Respondent.</p>
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No. 08-74764

Agency No. A097-608-028

MEMORANDUM*

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

Submitted March 6, 2012**

Before: B. FLETCHER, REINHARDT, and TASHIMA, Circuit Judges.

Anastasiya Uzzhina petitions for review of the Board of Immigration Appeals' ("BIA") order denying her motion to reopen removal proceedings. Our jurisdiction is governed by 8 U.S.C. § 1252. We review for abuse of discretion the

* 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).

denial of a motion to 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 acted within its discretion in denying Uzzhina's motion to reopen as untimely because Uzzhina filed her motion more than three years after the BIA's final order of removal, and she did not establish that her motion is subject to any exceptions to the filing deadline. *See* 8 C.F.R. § 1003.2(c)(2). Uzzhina's due process contentions are therefore not persuasive. *See Lata v. INS*, 204 F.3d 1241, 1246 (9th Cir. 2000) (requiring error for a due process violation).

We lack jurisdiction to review the BIA's decision not to invoke its sua sponte authority. *Mejia-Hernandez v. Holder*, 633 F.3d 818, 824 (9th Cir. 2011).

We also lack jurisdiction to review Uzzhina's unexhausted contention that equitable tolling should apply in her case. *See Barron v. Ashcroft*, 358 F.3d 674, 678 (9th Cir. 2004).

PETITION FOR REVIEW DENIED in part; DISMISSED in part.