

MAY 23 2012

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

IRMA JUVENTINA MENENDEZ,

Petitioner,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 10-70051

Agency No. A073-936-671

MEMORANDUM*

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

Submitted May 15, 2012**

Before: CANBY, GRABER, and M. SMITH, Circuit Judges.

Irma Juventina Menendez, a native and citizen of El Salvador, petitions for review of the Board of Immigration Appeals' ("BIA") order denying her motion to reopen. We have jurisdiction under 8 U.S.C. § 1252. We review for abuse of

* 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).

discretion the denial of a motion to reopen, *Ghahremani v. Gonzales*, 498 F.3d 993, 997 (9th Cir. 2007), and we deny the petition for review.

The BIA did not abuse its discretion in denying Menendez’s motion to reopen as untimely. *See* 8 C.F.R. § 1003.2(c)(2). Even if Menendez were entitled to equitable tolling of the filing deadline during the representation by her former counsels, her motion is untimely because it was filed more than ninety days after she met with present counsel and “definitively learned” of her former counsels’ incompetence. *See Ghahremani*, 498 F.3d at 999-1000; *see also Dela Cruz v. Mukasey*, 532 F.3d 946, 949 (9th Cir. 2008) (per curiam) (“[T]he pendency of a petition for review of an order of removal does not toll the statutory time limit for the filing of a motion to reopen with the BIA.”).

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

We note that Menendez has been granted Temporary Protected Status and cannot be removed from the United States while she maintains this status. *See* 8 U.S.C. § 1254a(a)(1)(A).

The Clerk shall amend the docket to reflect that the sole petitioner is Irma Juventina Menendez, A073-936-671. The substance of the underlying motion to reopen relates solely to Irma Juventina Menendez. Because Melvin Ernesto

Menendez did not file a separate petition for review and cannot derive any status from his mother's applications for relief, his case is not before us.

PETITION FOR REVIEW DENIED.