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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>CARLOS PATROCINIO PEREZ BARRIOS,</p> <p style="text-align: center;">Petitioner,</p> <p style="text-align: center;">v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p style="text-align: center;">Respondent.</p>

No. 10-73030

Agency No. A070-643-789

MEMORANDUM*

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

Submitted June 26, 2012**

Before: SCHROEDER, HAWKINS, and GOULD, Circuit Judges.

Carlos Patrocinio Perez Barrios, a native and citizen of Guatemala, petitions for review of the Board of Immigration Appeals’ (“BIA”) order dismissing his appeal from an immigration judge’s decision denying his motion to reopen based

* 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).

on ineffective assistance of counsel. Our jurisdiction is governed by 8 U.S.C. § 1252. We review for abuse of discretion the 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 agency did not abuse its discretion in denying Perez Barrios's motion to reopen where he filed the motion more than twelve years after entry of his final administrative order, *see* 8 C.F.R. 1003.23(b)(1), and he failed to establish the due diligence required to warrant equitable tolling of the motion's deadline, *see Iturribarria*, 321 F.3d at 897 (equitable tolling available "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").

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

PETITION FOR REVIEW DENIED in part; DISMISSED in part.