

OCT 12 2012

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>FERNANDO BARCENAS-CARRANZA; MARIA DEL ROSARIO FLORES- ABARCA,</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. 10-72107

Agency Nos. A096-047-956
A096-047-957

MEMORANDUM*

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

Submitted October 9, 2012**

Before: RAWLINSON, MURGUIA, and WATFORD, Circuit Judges.

Fernando Barcenas-Carranza and Maria Del Rosario Flores-Abarca, natives and citizens of Mexico, petition for review of the Board of Immigration Appeals’ (“BIA”) order denying their motion to reopen based on ineffective assistance 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).

counsel. We have jurisdiction under 8 U.S.C. § 1252. We review for abuse of discretion the denial of a motion to reopen, *Avagyan v. Holder*, 646 F.3d 672, 674 (9th Cir. 2011), and we deny the petition for review.

The BIA did not abuse its discretion in denying petitioners' motion to reopen as untimely where petitioners failed to establish that they filed the motion within 90 days of meeting with present counsel and learning of the harm resulting from the alleged actions of their former representative. *See id.* at 679 (equitable tolling period ends, and 90-day filing period begins, "when petitioner definitively learns of the harm resulting from counsel's deficiency"). No ineffective assistance claim has been raised against present counsel.

This disposition in no way precludes petitioners from filing a subsequent motion to reopen with the BIA if circumstances exist that would support further examination of their case.

The Clerk is instructed to serve this disposition not only on petitioners' counsel, but also on petitioners at 542 East Phillips Street, Ontario, California, 91761-0000.

PETITION FOR REVIEW DENIED.