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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>MARIA AZUCENA BENAVIDEZ,</p> <p style="text-align: center;">Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p style="text-align: center;">Respondent.</p>

No. 12-70055

Agency No. A096-064-324

MEMORANDUM*

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

Submitted May 14, 2013**

Before: LEAVY, THOMAS, and MURGUIA, Circuit Judges.

Maria Azucena Benavidez, a native and citizen of Mexico, petitions pro se 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 denial of a motion to reopen.

* 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).

Mohammed v. Gonzales, 400 F.3d 785, 791 (9th Cir. 2005). We deny in part and dismiss in part the petition for review.

The BIA did not abuse its discretion in denying Benavidez's motion to reopen where Benavidez failed to submit any newly available, material evidence of hardship. *See* 8 C.F.R. § 1003.2(c)(1). Contrary to Benavidez's assertions in her motion to reopen, no medical evidence relevant to the hardship to her qualifying relatives was submitted with her motion.

The BIA also did not abuse its discretion in denying Benavidez's motion to reopen on the ground that she waived her allegations of ineffective assistance of counsel. *See Toquero v. INS*, 956 F.2d 193, 196 (9th Cir. 1992).

We lack jurisdiction to consider Benavidez's contention that her case warrants a favorable exercise of prosecutorial discretion. *See Vilchiz-Soto v. Holder*, 688 F.3d 642, 644 (9th Cir. 2012) (order).

PETITION FOR REVIEW DENIED in part; DISMISSED in part.