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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>GREGORIO OSTOLAZA-AYALA,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p>Respondent.</p>

No. 09-72503

Agency No. A092-183-358

MEMORANDUM*

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

Submitted August 14, 2013**

Before: SCHROEDER, GRABER, and PAEZ, Circuit Judges.

Gregorio Ostolaza-Ayala, a native and citizen of Peru, petitions for review of the Board of Immigration Appeals’ (“BIA”) order denying his motion to reopen removal proceedings. We have jurisdiction under 8 U.S.C. § 1252. We review for abuse of discretion the denial of a motion to reopen, *Mohammed v. Gonzales*, 400

* 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).

F.3d 785, 791-92 (9th Cir. 2005), and we deny the petition for review.

The BIA did not abuse its discretion in denying Ostolaza-Ayala's motion to reopen as untimely where Ostolaza-Ayala filed his motion more than five years after his final order of removal, and he failed to demonstrate that the one-year filing deadline should be waived due to extraordinary circumstances. 8 U.S.C. § 1229a(c)(7)(C)(iv)(III).

In light of our disposition, we need not reach Ostolaza-Ayala's remaining contention.

PETITION FOR REVIEW DENIED.