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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>ALICE P. GULLEY,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p>Respondent.</p>

No. 12-72873

Agency No. A043-972-867

MEMORANDUM*

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

Submitted January 21, 2014**

Before: CANBY, SILVERMAN, and PAEZ, Circuit Judges.

Alice P. Gulley, a native and citizen of the Philippines, petitions for review of the Board of Immigration Appeals’ (“BIA”) order denying her motion to reopen removal proceedings based on ineffective assistance of counsel. We have jurisdiction under 8 U.S.C. § 1252. We review for abuse of discretion the denial 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).

a motion to reopen, *Avagyan 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 Gulley's motion to reopen as untimely where the motion was filed more than nine years after her removal order became final, *see* 8 C.F.R. § 1003.2(c)(2), and Gulley failed to show the due diligence required for equitable tolling of the filing deadline, *see Avagyan*, 646 F.3d at 679 (equitable tolling is available to a petitioner who is prevented from filing because of deception, fraud or error, and exercised due diligence in discovering such circumstances).

Because the timeliness issue is dispositive, we need not reach Gulley's remaining contention.

PETITION FOR REVIEW DENIED.