

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

OCT 4 2016

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

BENJAMIN SANCHEZ CABRERA,

Petitioner,

v.

LORETTA E. LYNCH, Attorney General,

Respondent.

No. 14-73035

Agency No. A095-000-389

MEMORANDUM*

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

Submitted September 27, 2016**

Before: TASHIMA, SILVERMAN, and M. SMITH, Circuit Judges.

Benjamin Sanchez Cabrera, a native and citizen of Mexico, petitions pro se for review of the Board of Immigration Appeals' ("BIA") order denying his motion to reopen. Our jurisdiction is governed by 8 U.S.C. § 1252. We review for abuse of discretion the denial of a motion to reopen. *Avagyan v. Holder*, 646 F.3d

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

672, 678 (9th Cir. 2011). We deny in part and dismiss in part the petition for review.

The BIA did not abuse its discretion in denying Sanchez Cabrera's motion to reopen as untimely, where it was filed more than 10 years past the filing deadline, *see* 8 C.F.R. § 1003.2(c)(2), and he does not qualify for any regulatory exception or equitable tolling of the deadline, *see* 8 C.F.R. § 1003.2(c)(3); *Avagyan*, 646 F.3d at 679 (equitable tolling is available to an alien who is prevented from timely filing a motion to reopen due to deception, fraud, or error, as long as petitioner exercises due diligence in discovering such circumstances).

We lack jurisdiction to review the BIA's decision not to reopen proceedings sua sponte. *See Mejia-Hernandez v. Holder*, 633 F.3d 818, 823-24 (9th Cir. 2011); *cf. Bonilla v. Lynch*, No. 12-73853, 2016 WL 3741866, at *10 (9th Cir. July 12, 2016).

In light of this disposition, we do not reach Sanchez Cabrera's remaining contentions.

PETITION FOR REVIEW DENIED in part; DISMISSED in part.