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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

GLORIA LIDIA AMAYA RAMOS, AKA Gloria Amaya, Petitioner, v. JEFFERSON B. SESSIONS III, Attorney General, Respondent.	No. 13-70740 Agency No. A073-217-087 MEMORANDUM*

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

Argued and Submitted December 7, 2017
Seattle, Washington

Before: O'SCANNLAIN, TALLMAN, and WATFORD, Circuit Judges.

Gloria Amaya-Ramos seeks review of the Board of Immigration Appeals' (BIA) denial of her motion to reopen deportation proceedings. Because the facts are known to the parties, we repeat them only as necessary to explain our decision.

I

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

The BIA did not err in denying Amaya-Ramos's motion to reopen, because the motion to reopen was both untimely and number-barred. Generally, an alien may only file one motion to reopen, and that motion must be filed within 90 days of the final administrative order of removal. 8 U.S.C. § 1229a(c)(7). Because Amaya-Ramos's final administrative order of removal was entered in 1997, and her present motion to reopen was filed in 2012, the motion is untimely on its face. The motion is also number-barred, because Amaya-Ramos filed an earlier motion to reopen in 2008.

The deadlines and numerical limits on motions to reopen are subject to equitable tolling "during periods when a petitioner is prevented from filing because of deception, fraud, or error, as long as the petitioner acts with due diligence in discovering the deception, fraud, or error." *Iturribarria v. I.N.S.*, 321 F.3d 889, 897 (9th Cir. 2003). But Amaya-Ramos failed to argue specifically for equitable tolling in her opening brief, and so she has waived that argument. *See Miller v. Fairchild Indus., Inc.*, 797 F.2d 727, 738 (9th Cir. 1986) ("The Court of Appeals will not ordinarily consider matters on appeal that are not specifically and distinctly argued in appellant's opening brief, ...").

II

Because the untimely and number-barred nature of the motion is dispositive of this appeal, we need not decide whether Amaya-Ramos "suffered a 'gross miscarriage of justice' in [her] initial deportation proceeding." *Garcia de Rincon v. Dep't of Homeland Sec.*, 539 F.3d 1133, 1138 (9th Cir. 2008). Similarly, we need not reach her eligibility for Temporary Protected Status under 8 U.S.C. § 1254a.

The petition for review is **DENIED**.

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WATFORD, Circuit Judge, concurring:

I agree that, as a legal matter, we cannot grant Gloria Amaya-Ramos relief based on the record here, notwithstanding the ineffective assistance she received from a series of immigration professionals, including a lawyer who was later disbarred. While our decision clears away the legal obstacles to her removal, in my view deporting Amaya-Ramos would be unjust.

For the past 25 years, Amaya-Ramos has been a model employee, mother, and community member in the United States. She came to this country at the age of 21, fleeing violence in her native El Salvador. She has worked for over 15 years at the same Washington-based fruit packing plant, where, according to management, she is "well respected by her peers [and] always on time for work." She has never been convicted of any crime. She has paid her taxes, rent, utilities, car insurance, and daycare bills on time. Twenty members of her family, community, and church wrote recommendation letters in support of Amaya-Ramos' motion to reopen her asylum application. They describe her as "a loving and caring mother," who is "responsible, respectful, honest, hardworking, reliable and a wonderful asset to [the] community."

Amaya-Ramos and her husband have three U.S. citizen daughters, ages 15, nine, and five. She is now raising her daughters alone because her husband has

already been deported to Mexico. Teachers describe the eldest daughter—the only one in school at the time of Amaya-Ramos' application—as an "outstanding student" who always "showed respect" and "was eager to help anyone in need." Amaya-Ramos' daughter does not want to leave the United States because, she wrote, "I really really like my school here," and she is understandably afraid of the violence in El Salvador if she were forced to move there. In El Salvador, all three daughters would likely lose access to the regular medical care they currently receive to manage their asthma.

I respectfully urge the Board of Immigration Appeals to reopen Amaya-Ramos' case. We can't direct the Board to do so in this case, but the Board "may at any time reopen or reconsider on its own motion any case in which it has rendered a decision." 8 C.F.R. § 1003.2(a); *see Mata v. Lynch*, 135 S. Ct. 2150, 2153 (2015). I urge the Board to exercise that discretion here, given the woefully inadequate legal representation Amaya-Ramos received through no fault of her own. That incompetent representation deprived Amaya-Ramos of any meaningful opportunity to obtain immigration relief for which she appears to have been eligible. Alternatively, I urge the Department of Homeland Security to exercise its prosecutorial discretion to refrain from executing Amaya-Ramos' removal order, given the many contributions she has made to the United States and the hardship

her U.S. citizen daughters would face as a result of her deportation.