NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

VARDUHI HOVAKIMYAN; MILENA
HOVSEPYAN; ARTUOM
HOVSEPYAN,

Petitioners,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 10-71895

Agency Nos. A075-763-493
             A075-763-495
             A075-763-496

MEMORANDUM[*]

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

Submitted December 19, 2012[**]

Before: GOODWIN, WALLACE, and FISHER, Circuit Judges.

Varduhi Hovakimyan and family, natives and citizens of Armenia, petition

for review of the Board of Immigration Appeals' ("BIA") order denying their

motion to reopen. We have jurisdiction under 8 U.S.C. § 1252. We review for

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[*]   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).

abuse of discretion the denial of a motion to reopen, and review de novo questions of law. *Avagyan v. Holder*, 646 F.3d 672, 674 (9th Cir. 2011) . We deny the petition for review.

The BIA did not abuse its discretion in denying petitioners' motion to reopen because the motion to reopen was filed nearly thirteen months after the BIA's August 11, 2005, order dismissing the underlying appeal, *see* 8 C.F.R. § 1003.2(c)(2) (motion to reopen generally must be filed within 90 days of the final administrative order), and petitioners failed to establish grounds for equitable tolling, *see Avagyan*, 646 F.3d at 679 (equitable tolling available "when a petitioner is prevented from filing because of deception, fraud, or error, as long as the petitioner acts with due diligence"). It follows that petitioners' due process claim fails. *See Lata v. INS*, 204 F.3d 1241, 1246 (9th Cir. 2000) (requiring error and prejudice for a petitioner to prevail on a due process claim).

In light of our disposition, we need not reach petitioners' remaining claims.

PETITION FOR REVIEW DENIED.