

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JUN 18 2018

FOR THE NINTH CIRCUIT

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

PERLA YADIRA PINON MARQUEZ,

No. 17-71848

Petitioner,

Agency No. A087-150-948

v.

MEMORANDUM*

JEFFERSON B. SESSIONS III, Attorney
General,

Respondent.

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

Submitted June 12, 2018**

Before: RAWLINSON, CLIFTON, and NGUYEN, Circuit Judges.

Perla Yadira Pinon Marquez, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' order dismissing her appeal from an immigration judge's order denying her motion to reopen removal proceedings. Our jurisdiction is governed by 8 U.S.C. § 1252. We review for abuse of discretion the

* 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).

denial of a motion to reopen. *Mohammed v. Gonzales*, 400 F.3d 785, 791 (9th Cir. 2005). We deny in part and dismiss in part the petition for review.

The agency did not abuse its discretion in denying Pinon Marquez's motion to reopen as untimely, where she filed the motion more than 90 days after her final order of removal, and failed to show that equitable tolling of the filing deadline was warranted. *See* 8 C.F.R. § 1003.23(b)(1); *Avagyan v. Holder*, 646 F.3d 672, 679, 682 (9th Cir. 2011) (tolling available to petitioner who is prevented from timely filing a motion to reopen due to deception, fraud or error, as long as petitioner is diligent in discovering such circumstances; motion is timely if it is filed within 90 days of obtaining vital information bearing on the existence of a claim of deception, fraud, or error).

Our jurisdiction to review the agency's discretionary decision not to reopen proceedings sua sponte is limited to contentions of legal or constitutional error. *See Bonilla v. Lynch*, 840 F.3d 575, 588 (9th Cir. 2016). The record does not support Pinon Marquez's contentions that the agency failed to sufficiently consider arguments or consider relevant factors. *See Najmabadi v. Holder*, 597 F.3d 983, 990 (9th Cir. 2010) (agency need not write an exegesis on every contention); *Fernandez v. Gonzales*, 439 F.3d 592, 603 (9th Cir. 2006) (petitioner did not overcome the presumption that the BIA did review the record).

In light of our disposition, we do not reach Pinon Marquez's remaining contentions regarding her 2009 proceedings or eligibility for relief.

PETITION FOR REVIEW DENIED in part; DISMISSED in part.