

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

FEB 22 2021

FOR THE NINTH CIRCUIT

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

ELVIRA MARTIN PARKIN, aka Elvira
Martin Santos; ELINOR MARTIN
SANTOS; MARCO ANTONIO MARTIN
SANTOS,

Petitioners,

v.

ROBERT M. WILKINSON, Acting
Attorney General,

Respondent.

No. 10-73864

Agency Nos. A074-331-245
A045-408-662
A045-408-663

MEMORANDUM*

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

Submitted February 17, 2021**

Before: FERNANDEZ, BYBEE, and BADE, Circuit Judges.

Elvira Martin Parkin and her children, natives and citizens of the
Philippines, petition for review of the Board of Immigration Appeals' ("BIA")
order denying their motion to reopen removal proceedings based on ineffective

* 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).

assistance of counsel. We have jurisdiction under 8 U.S.C. § 1252. We review for abuse of discretion the denial of a motion to reopen. *Najmabadi v. Holder*, 597 F.3d 983, 986 (9th Cir. 2010). We grant the petition for review and we remand.

The BIA abused its discretion in determining that petitioners failed to demonstrate that they acted with due diligence in bringing ineffective assistance of counsel claims against their first two attorneys, where the BIA relied solely on the fact that petitioners did not bring these claims while they were represented by their third attorney. *See Ghahremani v. Gonzales*, 498 F.3d 993, 1000 (9th Cir. 2007) (finding petitioner exercised due diligence even where third and fourth counsel did not inform petitioner that second counsel was ineffective). Thus, we grant the petition for review and remand to the agency for further proceedings consistent with this disposition. *See id.* at 1000-01; *see also INS v. Ventura*, 537 U.S. 12, 16-18 (2002) (per curiam).

Petitioners' request for oral argument, raised in their opening brief, is denied as moot.

Petitioners' removal is stayed pending a decision by the Board of Immigration Appeals.

The government must bear the costs for this petition for review.

PETITION FOR REVIEW GRANTED; REMANDED.