

SEP 07 2010

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>JUAN CARLOS MARTINEZ-VILLANUEVA,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p>Respondent.</p>

No. 08-71341

Agency No. A079-648-399

MEMORANDUM*

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

Submitted August 23, 2010**

Before: LEAVY, HAWKINS, and THOMAS, Circuit Judges.

Juan Carlos Martinez-Villanueva, a native and citizen of Honduras, petitions for review of the Board of Immigration Appeals' ("BIA") order denying his motion to reconsider as untimely. We have jurisdiction under 8 U.S.C. § 1252.

We review for abuse of discretion the denial of a motion to reconsider, *Cano-*

* 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).

Merida v. INS, 311 F.3d 960, 964 (9th Cir. 2002), and we deny the petition for review.

The BIA did not abuse its discretion in denying Martinez-Villanueva's motion to reconsider as untimely because he filed the motion more than 5 months after the BIA issued its final order, *see* 8 C.F.R. § 1003.2(b)(2), and Martinez-Villanueva did not show he acted with the diligence required for equitable tolling, *see Singh v. Gonzales*, 491 F.3d 1090, 1096-97 (9th Cir. 2007).

PETITION FOR REVIEW DENIED.