

MAR 15 2011

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MARIA MAYRA MOLINA MELCHOR,

Petitioner,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 08-72963

Agency No. A097-356-308

MEMORANDUM*

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

Submitted February 15, 2011**

Before: CANBY, FERNANDEZ, and M. SMITH, Circuit Judges.

Maria Mayra Molina Melchor, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' ("BIA") order denying her motion to reopen removal proceedings. We have jurisdiction under 8 U.S.C. § 1252. We review for abuse of discretion the denial of a motion to reopen, and review de novo

* 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).

questions of law. *Mohammed v. Gonzales*, 400 F.3d 785, 791-92 (9th Cir. 2005).

We deny the petition for review.

The BIA did not abuse its discretion in denying Molina Melchor's motion to reopen because her failure to file the motion before the expiration of her voluntary departure period rendered her statutorily ineligible for the relief she sought. *See* 8 U.S.C. § 1229c(d); *de Martinez v. Ashcroft*, 374 F.3d 759, 763-64 (9th Cir. 2004); *see also Granados-Oseguera v. Gonzales*, 546 F.3d 1011, 1015-16 (9th Cir. 2008). It follows that the BIA did not violate due process by not examining her new evidence of hardship. *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).

Molina Melchor's remaining contentions are unavailing.

PETITION FOR REVIEW DENIED.