

MAR 29 2011

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

EDWIN GIOVANNI RIVAS BOLVITO,

Petitioner,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 09-70555

Agency No. A076-858-638

MEMORANDUM*

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

Submitted March 8, 2011**

Before: FARRIS, O’SCANNLAIN, and BYBEE, Circuit Judges.

Edwin Giovanni Rivas Bolvito, a native and citizen of Guatemala, petitions for review of the Board of Immigration Appeals’ (“BIA”) order dismissing his appeal from an immigration judge’s decision denying his motion to reconsider.

We have jurisdiction under 8 U.S.C. § 1252. Reviewing for an abuse of discretion,

* 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).

Iturribarria v. INS, 321 F.3d 889, 894 (9th Cir. 2003), we deny the petition for review.

The BIA properly construed Bolvito's October 10, 2008, filing as a motion to reopen. *Mohammed v. Gonzales*, 400 F.3d 785, 793 (9th Cir. 2005). The agency did not abuse its discretion in denying Bolvito's third motion to reopen as untimely because he filed the motion more than nine years after his removal order was entered, *see* 8 C.F.R. § 1003.23(b)(4)(ii) (motion to reopen must be filed within 180 days of removal order entered in absentia), and Bolvito failed to show that he acted with the due diligence required to warrant equitable tolling of the filing deadline, *Iturribarria*, 321 F.3d at 897 (a petitioner may obtain equitable tolling based on ineffective assistance of counsel as long as he "act[ed] with due diligence in discovering the deception, fraud, or error").

PETITION FOR REVIEW DENIED.