

SEP 17 2012

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

GILBERTO VELASCO SANCHEZ;
BERTHA ARREGUIN CONTRERAS,

Petitioners,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 11-71022

Agency Nos. A079-572-703

A079-572-704

MEMORANDUM*

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

Submitted September 10, 2012**

Before: WARDLAW, CLIFTON, and N.R. SMITH, Circuit Judges.

Gilberto Velasco Sanchez and Bertha Arreguin Contreras, natives and citizens of Mexico, petition for review of the Board of Immigration Appeals' ("BIA") order denying their motion to reopen. Our jurisdiction is governed by 8

* 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).

U.S.C. § 1252. We review for abuse of discretion the denial of a motion to reopen. *Toufighi v. Mukasey*, 538 F.3d 988, 992 (9th Cir. 2008). We deny in part and dismiss in part the petition for review.

The BIA did not abuse its discretion in denying petitioners' motion to reopen as number- and time-barred where the successive motion was filed more than four years after their removal orders became final, *see* 8 C.F.R.

§ 1003.2(c)(2), and petitioners do not claim that they qualify for any regulatory exceptions to or equitable tolling of the filing limitations, *see* 8 C.F.R.

§ 1003.2(c)(3); *Avagyan v. Holder*, 646 F.3d 672, 678-80 (9th Cir. 2011)

(equitable tolling available during periods when petitioner is prevented from filing because of a deception, fraud, or error, as long as petitioner acts with due diligence in discovering such circumstances).

We lack jurisdiction to review the BIA's decision not to invoke its sua sponte authority to reopen proceedings under 8 C.F.R. § 1003.2(a). *See Mejia-Hernandez v. Holder*, 633 F.3d 818, 823-24 (9th Cir. 2011).

PETITION FOR REVIEW DENIED in part; DISMISSED in part.