

DEC 02 2013

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>FREDY OSWALDO VILLANUEVA-MORAN,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p>Respondent.</p>
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No. 11-71442

Agency No. A077-284-100

MEMORANDUM*

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

Submitted November 19, 2013**

Before: CANBY, TROTT, and THOMAS, Circuit Judges.

Fredy Oswaldo Villanueva-Moran, a native and citizen of Guatemala, petitions for review of the Board of Immigration Appeals’ (“BIA”) order denying his second motion to reopen removal proceedings. Our jurisdiction is governed by 8 U.S.C. § 1252. We review for abuse of discretion the denial of a motion to

* 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).

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 Villanueva-Moran's second motion to reopen as untimely and number-barred where the motion was filed over three years after the agency's final order, *see* 8 C.F.R. § 1003.2(c)(2), and Villanueva-Moran failed to demonstrate changed circumstances in Guatemala to qualify for the regulatory exception to the time limit for filing motions to reopen, *see* 8 C.F.R. § 1003.2(c)(3)(ii); *see also* *Toufighi*, 538 F.3d at 996.

We lack jurisdiction to review Villanueva-Moran's contentions related to humanitarian asylum and equitable tolling based on ineffective assistance of counsel regarding his asylum claim because he failed to raise them to the BIA. *See Barron v. Ashcroft*, 358 F.3d 674, 677-78 (9th Cir. 2004). We also lack jurisdiction to review the BIA's decision not to reopen under its sua sponte authority. *See Mejia-Hernandez v. Holder*, 633 F.3d 818, 823-24 (9th Cir. 2011). We reject Villanueva-Moran's contentions that the BIA ignored his change-of-law arguments and insufficiently explained its reasoning.

Finally, we deny Villanueva-Moran's request for attorney fees.

PETITION FOR REVIEW DENIED in part; DISMISSED in part.