

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

DEC 19 2018

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

ISRAEL CRUZ-GONZALEZ,

Petitioner,

v.

MATTHEW G. WHITAKER, Acting
Attorney General,

Respondent.

No. 16-73416

Agency No. A205-319-449

MEMORANDUM*

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

Submitted December 17, 2018**

Before: WALLACE, SILVERMAN, and McKEOWN, Circuit Judges.

Israel Cruz-Gonzalez, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' order dismissing his appeal from an immigration judge's order denying his second motion to reopen removal proceedings conducted in absentia. We have jurisdiction under 8 U.S.C. § 1252.

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

We review for abuse of discretion the denial of a motion to reopen. *Mohammed v. Gonzales*, 400 F.3d 785, 791 (9th Cir. 2005). We deny the petition for review.

The agency did not abuse its discretion in denying Cruz-Gonzalez's second motion to reopen as untimely and number-barred, where he filed the motion after the applicable filing deadline, and failed to show that equitable tolling of the time and number limits was warranted. *See* 8 C.F.R. § 1003.23(b)(4)(ii); *Avagyan v. Holder*, 646 F.3d 672, 679 (9th Cir. 2011) (tolling available to petitioner who is prevented from timely filing a motion to reopen due to deception, fraud or error, as long as petitioner is diligent in discovering such circumstances).

Cruz-Gonzalez has waived any challenge to the agency's denial of sua sponte reopening. *See Rizk v. Holder*, 629 F.3d 1083, 1091 n.3 (9th Cir. 2011) (issues not raised in an opening brief are waived).

In light our disposition, we do not reach Cruz-Gonzalez's remaining contentions regarding exceptional circumstances and any alleged ineffective assistance of counsel.

PETITION FOR REVIEW DENIED.