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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>IRMA ROSARIO NORIEGA SALAZAR,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p>Respondent.</p>
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No. 08-72988

Agency No. A095-446-797

MEMORANDUM*

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

Submitted November 16, 2010**

Before: TASHIMA, BERZON, and CLIFTON, Circuit Judges.

Irma Rosario Noriega Salazar (“Noriega”), a native and citizen of Bolivia, petitions for review of the Board of Immigration Appeals’ (“BIA”) order denying her motion to reopen proceedings due to ineffective assistance of counsel. We have jurisdiction under 8 U.S.C. § 1252. We review for abuse of discretion the

* 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).

denial of a motion to reopen, and review de novo questions of law, including claims of due process violations. *See 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 by denying Noriega's February 1, 2008, motion to reopen on the ground that she did not establish her former counsel failed to present available evidence that may have affected the outcome of her case. *See id.* at 793-94 (petitioner must show prejudice to prevail on an ineffective assistance claim). Contrary to Noriega's contention, a presumption of prejudice does not apply. *Cf. Singh v. Ashcroft*, 367 F.3d 1182, 1189 (9th Cir. 2004) (applying presumption of prejudice where counsel failed to file any brief on appeal).

Noriega's contention that the BIA applied an incorrect standard in ruling on her motion to reopen is unsupported by the record.

In light of our disposition, we do not address Noriega's remaining arguments contentions.

PETITION FOR REVIEW DENIED.