

JAN 18 2011

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

HEIDI G. ALDANA,

Petitioner,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 08-74854

Agency No. A074-802-913

MEMORANDUM*

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

Submitted January 10, 2011**

Before: BEEZER, TALLMAN, and CALLAHAN, Circuit Judges.

Heidi G. Aldana, a native and citizen of Guatemala, petitions for review of the Board of Immigration Appeals' ("BIA") order denying her motion to reopen removal proceedings. We have jurisdiction under 8 U.S.C. § 1252. We review for

* 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).

abuse of discretion the denial of a motion to reopen. *Iturribarria v. INS*, 321 F.3d 889, 894 (9th Cir. 2003). We deny the petition for review.

The BIA acted within its discretion in denying as untimely Aldana's motion to reopen because the motion was filed more than eight years after the BIA's final order of removal, *see* 8 C.F.R. § 1003.2(c)(2), and Aldana did not establish that she acted with the due diligence required for equitable tolling of the time limitation, *see Iturribarria*, 321 F.3d at 897. We therefore do not address the merits of the motion.

To the extent we have jurisdiction to review the BIA's decision not to invoke its sua sponte authority, the BIA acted within its broad discretion in declining to reopen under 8 C.F.R. § 1003.2(a).

PETITION FOR REVIEW DENIED.