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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>ARACELI SANTAMARIA-CANO,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p>Respondent.</p>

No. 09-71580

Agency No. A077-082-114

MEMORANDUM*

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

Submitted November 13, 2012**

Before: CANBY, TROTT, and W. FLETCHER, Circuit Judges.

Araceli Santamaria-Cano, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals’ (“BIA”) order denying her motion to reopen removal proceedings based on ineffective assistance of counsel. Our jurisdiction is governed by 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 claims of due process violations. *Mohammed v. Gonzales*, 400 F.3d 785, 791-92 (9th Cir. 2005). We deny in part and dismiss in part the petition for review.

The BIA did not abuse its discretion in denying Santamaria-Cano's motion to reopen for failure to establish prejudice, where she failed to show that the alleged ineffective assistance may have affected the outcome of her proceedings. *See id.* at 793 (requiring prejudice to prevail on ineffective assistance claim); *see also Lara-Torres v. Ashcroft*, 383 F.3d 968, 973-75 (9th Cir. 2004), *amended by* 404 F.3d 1105 (9th Cir. 2005) (no ineffective assistance where representative's incorrect advice led to the institution of removal proceedings and petitioner was ineligible for relief).

We lack jurisdiction to review Santamaria-Cano's contention that she suffered ineffective assistance from the attorney she hired to file her previous petition for review because she failed to raise this issue before the agency and thereby failed to exhaust her administrative remedies. *See Barron v. Ashcroft*, 358 F.3d 674, 678 (9th Cir. 2004) (this court lacks jurisdiction to review contentions not raised before the agency).

Santamaria-Cano's remaining contentions are unavailing.

PETITION FOR REVIEW DENIED in part; DISMISSED in part.