

DEC 07 2012

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MA ISABEL ORTEGA-PEREZ,

Petitioner,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 09-73220

Agency No. A075-495-126

MEMORANDUM*

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

Submitted December 5, 2012**
Pasadena, California

Before: BERZON and IKUTA, Circuit Judges, and ZIPPS, District Judge.***

Ma Isabel Ortega-Perez, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' order dismissing her appeal of an

* 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).

*** The Honorable Jennifer G. Zipps, District Judge for the U.S. District Court for the District of Arizona, sitting by designation.

immigration judge's denial of her motion to reopen removal proceedings conducted in absentia based on ineffective assistance of counsel. We have jurisdiction under 8 U.S.C. § 1252(a)(2)(D) (allowing for judicial review where motion to reopen contains a constitutional claim or a question of law). We review the denial of a motion to reopen for abuse of discretion, *Singh v. Gonzales*, 491 F.3d 1090, 1095 (9th Cir. 2007), and we deny the petition for review.

The agency did not abuse its discretion in denying Ortega-Perez's motion to reopen as untimely because the motion was filed more than nine years after the issuance of the September 8, 1998 in absentia order, *see* 8 C.F.R. § 1003.23(b)(4)(ii), and Ortega-Perez failed to establish that she acted with the due diligence required to warrant equitable tolling of the 180-day filing deadline, *see Iturribarria v. INS*, 321 F.3d 889, 897 (9th Cir. 2003) (equitable tolling is available to petitioner who is prevented from filing "because of deception, fraud, or error" and exercises due diligence in discovering such circumstances).

PETITION FOR REVIEW DENIED.