

JUN 06 2014

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

NOT FOR PUBLICATION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

**MARIANO ABUNDEZ MORAN;
DOLORES GARCIA PERALTA;
GABRIELLE ABUNDEZ
HERNANDEZ; SERGIO ABUNDEZ
HERNANDEZ; YANELY ABUNDEZ
HERNANDEZ, AKA Yanelli Abundez
Hernandez,**

Petitioners,

v.

**ERIC H. HOLDER, Jr., Attorney
General,**

Respondent.

No. 10-73484

Agency Nos. A075-473-727
 A075-489-386
 A074-352-726
 A074-352-727
 A074-352-728

MEMORANDUM*

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

Submitted June 4, 2014**
Pasadena, California

Before: **KOZINSKI**, Chief Judge, **TROTT** and **CALLAHAN**, Circuit
Judges.

* 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 Board of Immigration Appeals didn't abuse its discretion in affirming the Immigration Judge's denial of petitioners' untimely motion to reopen. See Perez v. Mukasey, 516 F.3d 770, 773 (9th Cir. 2008). Equitable tolling is inappropriate in this case because petitioners didn't exercise due diligence during the six years they waited between the initial denial of their request for cancellation of removal and their motion to reopen. See Iturribarria v. INS, 321 F.3d 889, 897 (9th Cir. 2003). Petitioners claim that they were not aware of counsel's failure to present certain evidence, but they were at the hearing and thus were aware of what evidence the lawyer introduced. Their failure to retain new counsel or otherwise ascertain the status of their appeal demonstrates a lack of diligence. See Singh v. Gonzales, 491 F.3d 1090, 1096–97 (9th Cir. 2007).

Even if they had been diligent, petitioners are unable to demonstrate that their attorneys' failure to introduce evidence of their son's enlarged tonsils prejudiced their case. See Mohammed v. Gonzales, 400 F.3d 785, 793–94 (9th Cir. 2005). The enlarged tonsils don't constitute an "exceptional and extremely unusual hardship," as required for cancellation of removal. 8 U.S.C. § 1229b(b)(1)(D).

DENIED.