

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

FEB 6 2020

FOR THE NINTH CIRCUIT

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

MARIA CLAUDIA PERALTA GARCIA,

Petitioner,

v.

WILLIAM P. BARR, Attorney General,

Respondent.

No. 17-73201

Agency No. A097-354-895

MEMORANDUM*

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

Submitted February 4, 2020**

Before: FERNANDEZ, SILVERMAN, and TALLMAN, Circuit Judges.

Maria Claudia Peralta Garcia, 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. We have jurisdiction under 8 U.S.C. § 1252. We review for abuse of discretion the denial of a motion to reopen. *Mohammed v. Gonzales*, 400 F.3d 785, 791 (9th Cir. 2005).

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

We deny the petition for review.

The BIA did not abuse its discretion in denying Peralta Garcia's motion to reopen as untimely where her motion was filed more than 11 years after the BIA's December 28, 2005, order dismissing her appeal, *see* 8 C.F.R. § 1003.2(c)(2), and Peralta Garcia failed to establish the due diligence required to warrant tolling of the filing deadline, *see Avagyan v. Holder*, 646 F.3d 672, 674 (9th Cir. 2011) (equitable tolling is available to a petitioner who is prevented from filing because of deception, fraud or error, and exercised due diligence in discovering such circumstances). The record does not support her contention that the BIA expected her to comply with the threshold requirements of *Matter of Lozada*, 19 I. & N. Dec. 637 (BIA 1988), for all the attorneys she consulted.

Because untimeliness is dispositive, we do not reach Peralta Garcia's remaining contentions regarding ineffective assistance, prejudice, and hardship.

PETITION FOR REVIEW DENIED.