

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

AUG 31 2009

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

JAIME LEONEL MONTERROSO,

Petitioner,

v.

ERIC H. HOLDER Jr., Attorney General,

Respondent.

No. 08-70178

Agency No. A070-806-530

MEMORANDUM*

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

Submitted August 20, 2009**

Before: WALLACE, HAWKINS, and THOMAS, Circuit Judges.

Jaime Leonel Monterroso, a native and citizen of Guatemala, petitions for review of the Board of Immigration Appeals' ("BIA") order denying his motion to reopen. We have jurisdiction pursuant to 8 U.S.C. § 1252. We review for abuse of

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

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

discretion the denial of a motion to reopen, and review de novo claims of due process violations. *Iturribarria v. INS*, 321 F.3d 889, 894 (9th Cir. 2003). We deny the petition for review.

The BIA did not abuse its discretion in denying the motion to reopen as untimely because the motion was filed more than 9 years after the BIA's August 28, 1998 order dismissing the underlying appeal, *see* 8 C.F.R. § 1003.2(c)(2), and Monterroso failed to establish grounds for equitable tolling, *see Iturribarria*, 321 F.3d at 897 (equitable tolling available where a "petitioner is prevented from filing because of deception, fraud, or error, as long as the petitioner acts with due diligence"); *see also Reyes v. Ashcroft*, 358 F.3d 592, 597 (9th Cir. 2004) (compliance with requirements set forth in *Matter of Lozada*, 19 I. & N. Dec. 637 (BIA 1988) generally enforced where alleged ineffective assistance of counsel is not "obvious and undisputed on the face of the record").

Monterroso's contentions that the BIA abused its discretion and violated due process by prematurely denying his motion to reopen are unavailing. *Cf. Yeghiazaryan v. Gonzales*, 439 F.3d 994, 1000 (9th Cir. 2006) (BIA abused its discretion and violated due process in denying fully supported motion to reconsider

where skeletal but timely protective motion to reopen was denied prior to the expiration of the 90-day filing period for failure to submit supporting evidence).

PETITION FOR REVIEW DENIED.