

NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 25-13625
Non-Argument Calendar

JHONNY XAVIER CASTIBLANCO-MANRIQUE,
MARTHA HELENA RAMIREZ-RAMOS,
HANNY MARIANA CASTIBLANCO-RAMIREZ,

Petitioners,

versus

U.S. ATTORNEY GENERAL,

Respondent.

Petition for Review of a Decision of the
Board of Immigration Appeals
Agency No. A220-867-808

Before JORDAN, ROSENBAUM, and GRANT, Circuit Judges.

PER CURIAM:

Jhonny Xavier Castiblanco-Manrique, along with his wife
Martha Helena Ramirez-Ramos and their daughter, petition for

review of an order of the Board of Immigration Appeals (“BIA”) denying their motion to reopen their removal proceedings. Because the BIA properly denied the motion to reopen, we deny the petition.

I

Mr. Castiblanco-Manrique, his wife, and their daughter (collectively the “Petitioners”) are natives and citizens of Colombia. On or around November 25, 2021, Petitioners entered the United States without inspection or valid entry documents and were apprehended by immigration officials. On February 20, 2022, the Department of Homeland Security served Petitioners with Notices to Appear, charging them with removability as non-citizens present in the United States without admission or parole. *See* 8 U.S.C. §§ 1182(a)(6)(A)(i), (a)(7)(A)(i)(I).

Through counsel, on December 9, 2022, Mr. Castiblanco-Manrique filed an application for asylum and related relief, listing his wife and daughter as derivative beneficiaries. At a March 2023 pre-hearing conference, their counsel moved to withdraw from representation. Petitioners were present and informed the Immigration Judge that counsel’s withdrawal was a “mutual decision.” The IJ granted counsel’s motion.

On March 28, 2023, at a merits hearing, the IJ denied Petitioners’ applications for relief and ordered them removed. Mr. Castiblanco-Manrique appealed, but the BIA summarily dismissed

the appeal as untimely because it was received on April 28, 2023, one day after the 30-day filing deadline.

On January 31, 2025, Mr. Castiblanco-Manrique, through new counsel, filed a motion to reopen on behalf of Petitioners. He argued that reopening was warranted based on the ineffective assistance of prior counsel and, alternatively, requested that the IJ exercise *sua sponte* authority to reopen proceedings. Petitioners argued that equitable tolling should apply because they did not discover their prior counsel's ineffective assistance until consulting new counsel in July of 2024 and upon receiving a response to their Freedom of Information Act ("FOIA") materials request in September of 2024.

The IJ denied the motion to reopen. The IJ reasoned that the motion was untimely because it was filed 732 days after the removal order. The IJ further reasoned that Petitioners had confirmed their mutual agreement with their prior counsel's withdrawal and also had failed to demonstrate the diligence necessary for equitable tolling. The BIA affirmed. It held that Petitioners were not entitled to equitable tolling because they had not demonstrated that they diligently pursued their rights. Petitioners now seek review.

II

We review the BIA's denial of a motion to reopen for an abuse of discretion. *See Hamilton v. U.S. Att'y Gen.*, 138 F.4th 1312,

1318 (11th Cir. 2025). “When reviewing the denial of discretionary relief, we consider whether the exercise of discretion was ‘arbitrary or capricious.’” *Ferreira v. U.S. Att’y Gen.*, 714 F.3d 1240, 1243 (11th Cir. 2013) (quoting *Garcia-Mir v. Smith*, 766 F.2d 1478, 1490 (11th Cir. 1985)). The BIA abuses its discretion when it misapplies the law or fails to follow precedent without providing a reasoned explanation for doing so. *See id.*

Legal conclusions underlying the BIA’s decision, as well as whether the BIA afforded a motion reasoned consideration, are reviewed *de novo*. *See Hamilton*, 138 F.4th at 1318. When the BIA relies on the IJ’s decision and reasoning, this Court reviews “the [IJ]’s decision to the extent that the BIA found the [IJ]’s reasoning was supported by the record, and we review the BIA’s decision as to issues on which it rendered its own opinion and reasoning.” *Laguna Rivera v. U.S. Att’y Gen.*, 130 F.4th 915, 919 (11th Cir. 2025) (quoting *Hasan-Nayem v. U.S. Att’y Gen.*, 55 F.4th 831, 842 (11th Cir. 2022)).

III

After review of the record and the parties’ arguments, we conclude that the BIA did not abuse its discretion in determining that Petitioners failed to establish entitlement to equitable tolling because they did not demonstrate diligence or an extraordinary circumstance.

As a general matter, a motion to reopen must “be filed within 90 days of the date of entry of a final administrative order of

removal.” 8 U.S.C. §§ 1229a(c)(7)(A), (c)(7)(C)(i). That deadline “is a non-jurisdictional claim-processing rule subject to equitable tolling.” *Avila-Santoyo v. U.S. Att’y Gen.*, 713 F.3d 1357, 1365 (11th Cir. 2013) (en banc). To obtain equitable tolling, a movant must establish “(1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way.” *Id.* at 1363 n.5 (quoting *Pace v. DiGuglielmo*, 544 U.S. 408, 418 (2005)). Although ineffective assistance of counsel may provide the basis for equitable tolling, a petitioner must first establish entitlement to equitable tolling before such a claim may be considered on the merits. *See Ruiz-Turcios v. U.S. Att’y Gen.*, 717 F.3d 847, 851 (11th Cir. 2013).

Equitable tolling is “an extraordinary remedy” that is “limited to rare and exceptional circumstances” and “typically applied sparingly.” *Hunter v. Ferrell*, 587 F.3d 1304, 1308 (11th Cir. 2009) (quotation marks and citations omitted). The diligence required is “reasonable diligence, not maximum feasible diligence.” *Holland v. Florida*, 560 U.S. 631, 653 (2010) (internal quotation marks and citations omitted). Nonetheless, a petitioner must generally explain why he waited as long as he did. *See United States v. Watkins*, 880 F.3d 1221, 1226 & n.2 (11th Cir. 2018). Likewise, equitable tolling applies where “extraordinary circumstances that are both beyond [the petitioner’s] control and unavoidable even with diligence” prevented timely filing. *Sandvik v. United States*, 177 F.3d 1269, 1271 (11th Cir. 1999).

Here, the BIA did not abuse its discretion in concluding that Petitioners failed to demonstrate reasonable diligence. Petitioners

argue that the filing period should have been tolled until September of 2024, when they received the FOIA materials that they had requested. Relying on *Mejia-Hernandez v. Holder*, 633 F.3d 818 (9th Cir. 2011), and *Albillo-De Leon v. Gonzales*, 410 F.3d 1090 (9th Cir. 2005), Petitioners contend that they could not have discovered the basis for their ineffective assistance of counsel claim before obtaining those materials.

The BIA considered Petitioners' argument but concluded that, even accepting their proposed timeline, they failed to demonstrate reasonable diligence. The BIA reasoned that Petitioners did not explain the approximately 10-month delay between the BIA's dismissal of their appeal in September of 2023 and their retention of new counsel in July of 2024. Nor did Petitioners explain why they did not file their motion to reopen during the additional four-months that passed after they had obtained the requested FOIA materials. On appeal, Petitioners assert that they "did not understand [they] could file a Motion to Reopen until [they] spoke to another Attorney." This argument, however, is insufficient. As this Court has recognized, a petitioner who fails to explain why he delayed filing a motion to reopen after the means to do so became available has not established the diligence required to warrant equitable tolling. *See United States v. Watkins*, 880 F.3d at 1226 & n.2. Given Petitioners' failure to explain their significant periods of delay, the BIA did not act arbitrarily or capriciously in concluding that they had failed to satisfy the due diligence requirement.

Additionally, the BIA did not abuse its discretion in determining that Petitioners failed to establish an extraordinary circumstance warranting equitable tolling. Although ineffective assistance of counsel may qualify as an extraordinary circumstance in appropriate cases, *see Ruiz-Turcios*, 717 F.3d at 851, Petitioners did not show that former counsel caused the untimely appeal or the delay in their filing the motion to reopen. Former counsel withdrew before the merits hearing on March 28, 2023. Moreover, Petitioners agreed to counsel's withdrawal. Additionally, the IJ had informed Petitioners orally and in writing that any appeal had to be filed by April 27, 2023. Petitioners nevertheless filed their appeal on April 28, 2023—one day late. Furthermore, as the BIA observed, Petitioners did not explain in their motion to reopen how any potential ineffective assistance caused the untimely appeal or otherwise meaningfully explain why the appeal was filed after the deadline. Nor do they do so in their petition to this Court.

The authorities on which Petitioners rely do not compel a different result. *Albillo-De Leon* and *Mejia-Hernandez* are nonbinding Ninth Circuit decisions involving petitioners who were prevented from discovering the factual basis for their claims because of counsel's fraud or deception. *See Albillo-De Leon*, 410 F.3d at 1100; *Mejia Hernandez*, 633 at 825. Here, Petitioners do not allege that their former counsel concealed information or otherwise prevented them from discovering their claim through fraud or misconduct. Although they contend that they did not realize they could seek

reopening until consulting new counsel, that assertion does not explain the periods of inactivity identified by the BIA.

The circumstances here also differ from those in other of Petitioners' cited cases, where equitable tolling was warranted because the petitioners had diligently pursued their rights despite obstacles beyond their control. *See Holland*, 560 U.S. at 653 (finding reasonable diligence where the petitioner repeatedly contacted counsel, courts, and the state bar, and filed his petition on the day that he discovered counsel's error). *See also Knight v. Schofield*, 292 F.3d 709, 711 (11th Cir. 2002) (granting equitable tolling where the petitioner diligently sought information from the court clerk after "the Supreme Court of Georgia failed to notify [him] of its decision"). Although Petitioners point to efforts to obtain replacement counsel before their March 2023 merits hearing, those actions do not account for the unexplained delays following the BIA's dismissal of their appeal.

Because Petitioners failed to establish the threshold requirements for equitable tolling, this Court need not reach the merits of their ineffective assistance of counsel claim. *See Ruiz-Turcios*, 717 F.3d at 851. Likewise, Petitioners' argument that the IJ erred in concluding that they failed to comply with *Matter of Lozada*, 19 I. & N. Dec. 637 (BIA 1988), is not properly before this Court because the BIA did not rely on that ground in denying Petitioners' motion to reopen.

Accordingly, because Petitioners failed to demonstrate either reasonable diligence or an extraordinary circumstance preventing timely filing, the BIA did not abuse its discretion in denying their motion to reopen.

IV

For these reasons, we deny the petition.

PETITION DENIED.