

JUN 30 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

KARAPET GRIGORYAN,

Petitioner,

v.

ERIC H. HOLDER Jr., Attorney General,

Respondent.

No. 06-74334

Agency No. A075-771-520

MEMORANDUM*

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

Submitted June 16, 2009**

Before: PAEZ, TALLMAN, and N.R. SMITH, Circuit Judges.

Karapet Grigoryan, a native and citizen of Armenia, petitions for review of the Board of Immigration Appeals' ("BIA") order denying his motion to reopen based on ineffective assistance of counsel. We have jurisdiction pursuant to

* 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).

8 U.S.C. § 1252. We review for abuse of discretion the denial of a motion to reopen. *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 Grigoryan's motion to reopen as untimely because the motion was filed more than 26 months after the BIA's March 16, 2004 order dismissing Grigoryan's appeal, *see* 8 C.F.R. § 1003.2(c)(2), and Grigoryan failed to establish that he exercised the due diligence required to warrant tolling of the motions deadline, *see Iturribarria*, 321 F.3d at 897 (equitable tolling is available to a petitioner who is prevented from filing due to deception, fraud or error, and exercises due diligence in discovering such circumstances).

Grigoryan's contention that the BIA engaged in an impermissible credibility determination is not supported by the record.

Counsel's request for oral argument is denied.

PETITION FOR REVIEW DENIED.