

DEC 09 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>LEONEL HUMBERTO MENDEZ AGUILUZ,</p> <p style="text-align: center;">Petitioner,</p> <p style="text-align: center;">v.</p> <p>ERIC H. HOLDER Jr., Attorney General,</p> <p style="text-align: center;">Respondent.</p>
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No. 06-73874

Agency No. A074-435-944

MEMORANDUM\*

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

Submitted November 17, 2009\*\*

Before: ALARCÓN, TROTT, and TASHIMA, Circuit Judges.

Leonel Humberto Mendez Aguiluz, a native and citizen of El Salvador,  
petitions pro se for review of an order of the Board of Immigration Appeals

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\* 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).

(“BIA”) denying his motion to reconsider the BIA’s prior order denying his motion to reopen removal proceedings. We have jurisdiction under 8 U.S.C. § 1252. We review for substantial evidence findings of fact relating to counsel’s performance, *Lin v. Ashcroft*, 377 F.3d 1014, 1023 (9th Cir. 2004), and for abuse of discretion motions to reconsider, *Cano-Merida v. INS*, 311 F.3d 960, 964 (9th Cir. 2002). We deny the petition for review.

Substantial evidence supports the BIA’s conclusion that Mendez Aguiluz did not establish prejudice resulting from his prior counsel’s allegedly ineffective assistance. *See Iturribarria v. INS*, 321 F.3d 889, 899-90 (9th Cir. 2003) (a showing of prejudice can be made if counsel’s performance “was so inadequate that it may have affected the outcome of the proceedings”) (internal quotation marks omitted). Moreover, the BIA did not abuse its discretion in denying the motion because the record supports the BIA’s conclusion that Mendez Aguiluz did not exercise due diligence in pursuing his claims for relief. *See Singh v. INS*, 295 F.3d 1037, 1039 (9th Cir. 2002) (unless BIA acted arbitrarily, irrationally, or contrary to law in denying a motion to reopen, the Court of Appeals should not disturb the BIA’s ruling).

**PETITION FOR REVIEW DENIED.**