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JAN 19 2010

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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

SAAK AVAKYANTS, Petitioner, v. ERIC H. HOLDER Jr., Attorney General, Respondent.	No. 07-73421 Agency No. A096-059-399 MEMORANDUM[*]

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

Submitted January 11, 2010[**]

Before: BEEZER, TROTT and BYBEE, Circuit Judges.

Saak Avakyants, a native of Azerbaijan and citizen of Russia, petitions for review of an order of the Board of Immigration Appeals' ("BIA") denying his motion to reopen proceedings. We have jurisdiction under 8 U.S.C. § 1252. We

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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).

review for abuse of discretion the denial of a motion to reopen. *Iturribarria v. INS*, 321 F.3d 889, 894 (9th Cir. 2003) (9th Cir. 2007). We deny the petition for review.

The BIA did not abuse its discretion in denying Avakyants' motion to reopen as untimely because the motion was filed more than two years after the BIA's order dismissing the underlying appeal, *see* 8 C.F.R. § 1003.2(c)(2), and Avakyants failed to establish that he acted with due diligence to warrant tolling of the ninety-day deadline for such motions, *see Iturribarria*, 321 F.3d at 899. In light of our disposition, we do not reach the issue of prejudice.

PETITION FOR REVIEW DENIED.