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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>AVTAR SINGH,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER Jr., Attorney General,</p> <p>Respondent.</p>
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No. 06-72360

Agency No. A077-424-839

MEMORANDUM\*

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

Submitted February 16, 2010\*\*

Before: FERNANDEZ, GOULD, and M. SMITH, Circuit Judges.

Avtar Singh, a native and citizen of India, petitions for review of the Board of Immigration Appeals' order denying his motion to reopen based on ineffective assistance of counsel. We have jurisdiction pursuant to 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 concludes this case is 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, and de novo questions of law, including claims of ineffective assistance of counsel, *Mohammed v. Gonzales*, 400 F.3d 785, 791-92 (9th Cir. 2005), we deny the petition for review.

The BIA acted within its discretion in denying as untimely Singh's motion to reopen because it was filed more than 90 days after the BIA's final removal order, *see* 8 C.F.R. § 1003.2(c)(2), and Singh did not show that he acted with the due diligence required for equitable tolling, *see Singh v. Gonzales*, 491 F.3d 1090, 1096-97 (9th Cir. 2007).

Singh's contention that an immigration consultant provided him with ineffective assistance of counsel is foreclosed by *Hernandez v. Mukasey*, 524 F.3d 1014, 1015-16 (9th Cir. 2008) (holding that "knowing reliance upon the advice of a non-attorney cannot support a claim for ineffective assistance of counsel in a removal proceeding.").

Singh's remaining contention is unpersuasive.

**PETITION FOR REVIEW DENIED.**