

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

APR 14 2010

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

KIRANPAL SINGH,

Petitioner,

v.

ERIC H. HOLDER Jr., Attorney General,

Respondent.

No. 07-71167

Agency No. A079-572-573

MEMORANDUM*

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

Submitted April 5, 2010**

Before: RYMER, McKEOWN, and PAEZ, Circuit Judges.

Kiranpal Singh, a native and citizen of India, petitions for review of the Board of Immigration Appeals' ("BIA") order denying his motion to reopen removal proceedings based on ineffective assistance of counsel. We have

* 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).

jurisdiction pursuant to 8 U.S.C. § 1252. We review for abuse of discretion the denial of a motion to reopen, and review de novo questions of law, including claims of due process violations due to ineffective assistance of counsel.

Mohammed v. Gonzales, 400 F.3d 785, 791-92 (9th Cir. 2005). We grant the petition for review and remand.

The BIA abused its discretion in basing its prejudice inquiry on a heightened standard where it concluded that petitioner “failed to establish that the outcome of his case would have been different.” *See Maravilla Maravilla v. Ashcroft*, 381 F.3d 855, 859 (9th Cir. 2004) (per curiam) (BIA abused its discretion by analyzing prejudice under too stringent a standard where “[i]t should have asked only whether [prior counsel’s] . . . performance may have affected the proceedings”). We therefore remand for the BIA to reconsider prejudice and whether petitioner established grounds for equitably tolling the regulatory filing deadline.

PETITION FOR REVIEW GRANTED; REMANDED.