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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>ALI QASEM SALEH ASAAD,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p>Respondent.</p>

No. 08-71946

Agency No. A096-169-887

MEMORANDUM*

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

Submitted September 13, 2010**

Before: SILVERMAN, CALLAHAN, and N.R. SMITH, Circuit Judges.

Ali Qasem Saleh Asaad, a native and citizen of Yemen, petitions for review of the Board of Immigration Appeals’ (“BIA”) decision denying his motion to reopen removal proceedings. We have jurisdiction under 8 U.S.C. § 1252. We review for abuse of discretion the denial of a motion to reopen. *Iturribarria v. INS*,

* 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).

321 F.3d 889, 894 (9th Cir. 2003). We deny in part and dismiss in part the petition for review.

The BIA did not abuse its discretion in denying Asaad's motion to reopen as untimely because he filed the motion more than two years after the BIA's March 25, 2005, order, *see* 8 C.F.R. § 1003.2(c)(2), and Asaad failed to establish that he acted with the due diligence required for equitable tolling, *see Iturribarria*, 321 F.3d at 897; *see also Singh v. Ashcroft*, 367 F.3d 1182, 1184 (9th Cir. 2004).

To the extent Asaad alleges current counsel may have rendered ineffective assistance of counsel that caused Asaad's lack of diligence, we lack jurisdiction to review that contention. *See Puga v. Chertoff*, 488 F.3d 812, 815 (9th Cir. 2007).

PETITION FOR REVIEW DENIED in part; DISMISSED in part.