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**NOT FOR PUBLICATION**

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

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| RODRIGO AGUILAR-VERGARA,<br><br>Petitioner,<br><br>v.<br><br>ERIC H. HOLDER, Jr., Attorney General,<br><br>Respondent. | No. 08-71856<br><br>Agency No. A079-535-342<br><br>MEMORANDUM* |

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

Submitted February 15, 2011**

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

Rodrigo Aguilar-Vergara, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' ("BIA") order 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, *Malty v. Ashcroft*,

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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).

381 F.3d 942, 945 (9th Cir. 2004), and we review de novo ineffective assistance of counsel claims, *Mohammed v. Gonzales*, 400 F.3d 785, 791-92 (9th Cir. 2005). We deny the petition for review.

The BIA did not abuse its discretion in denying Aguilar-Vergara's motion to reopen because Aguilar-Vergara failed to show he was prejudiced by his former counsel's withdrawal of his asylum application. *See Maravilla Maravilla v. Ashcroft*, 381 F.3d 855, 858-59 (9th Cir. 2004) (to reopen because of ineffective assistance of counsel, petitioners must show that counsel's performance was so inadequate that it may have affected the outcome of the proceedings); *see also Singh v. INS*, 295 F.3d 1037, 1039 (9th Cir. 2002) (the BIA's denial of a motion to reopen shall be reversed if it is "arbitrary, irrational, or contrary to law").

Aguilar-Vergara's contentions that the BIA erred by applying an incorrect legal standard and by making an improper adverse credibility determination are belied by the record.

**PETITION FOR REVIEW DENIED.**