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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

AUGUSTO BRIGIDO SAAVEDRA
CALDERON,

Petitioner,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 08-74614

Agency No. A070-784-023

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.

Augusto Brigido Saavedra Calderon, a native and citizen of Peru, petitions for review of the Board of Immigration Appeals' ("BIA") order denying his motion to reopen based on ineffective assistance of counsel. We have jurisdiction

* 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).

under 8 U.S.C. § 1252. We review for abuse of discretion the denial of a motion to reopen, *Iturribarria v. INS*, 321 F.3d 889, 894 (9th Cir. 2003), and we deny the petition for review.

The BIA did not abuse its discretion by denying Saavedra Calderon's motion to reopen because the motion was filed more than five years after the BIA's September 5, 2002, order dismissing the underlying appeal, *see* 8 C.F.R. § 1003.2(c)(2), and Saavedra Calderon failed to demonstrate that he acted with the due diligence required to warrant equitable tolling, *see Iturribarria*, 321 F.3d at 897.

PETITION FOR REVIEW DENIED.