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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>BAO RONG XU,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p>Respondent.</p>

No. 08-70868

Agency No. A077-153-315

MEMORANDUM*

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

Submitted March 8, 2011**

Before: FARRIS, O’SCANNLAIN, and BYBEE, Circuit Judges.

Bao Rong Xu, a native and citizen of China, petitions pro se 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, and de novo due process

* 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).

claims. *Iturribarria v. INS*, 321 F.3d 889, 894 (9th Cir. 2003). We deny the petition for review.

The BIA did not abuse its discretion in denying Xu's motion to reopen as untimely because the motion was filed more than 90 days after the issuance of the BIA's final order, *see* 8 C.F.R. § 1003.2(c)(2), and Xu failed to establish either changed circumstances in China, *see He v. Gonzales*, 501 F.3d 1128, 1131-32 (9th Cir. 2007) (change in personal circumstances does not establish changed circumstances in the country of origin excusing untimely motion to reopen), or that he acted with the due diligence required to warrant equitable tolling of the time limitation, *see Iturribarria*, 321 F.3d at 897 (equitable tolling is available to a petitioner who is prevented from filing due to deception, fraud, or error, and exercises due diligence in discovering such circumstances).

In light of our disposition, we do not reach Xu's contention that his former attorney's performance caused him prejudice.

PETITION FOR REVIEW DENIED.