

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

MAR 30 2011

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

DJAFAR SHAMS,

Petitioner,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 07-72244

Agency No. A078-670-244

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.

Djafar Shams, a native and citizen of Iran, petitions for review of the Board of Immigration Appeals' ("BIA") order denying his motion to reopen proceedings due to ineffective assistance of counsel. We have jurisdiction under 8 U.S.C.

* 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).

§ 1252. Reviewing for abuse of discretion, *Ghahremani v. Gonzales*, 498 F.3d 993, 997 (9th Cir. 2007), we grant the petition for review.

The BIA abused its discretion by refusing to equitably toll the time and number bars for Shams’s motion to reopen despite his demonstrated due diligence in discovering and attempting to redress the ineffectiveness of his former attorneys. *See id.* at 999-1000 (petitioner showed due diligence where he “demonstrated a steadfast pursuit of his case” even while being represented by deficient counsel, and quickly filed a motion to reopen after retaining competent counsel).

We therefore grant the petition for review and remand to the BIA for consideration of the merits of Shams’s ineffective assistance of counsel claim. *See INS v. Ventura*, 537 U.S. 12, 16 (2002) (per curiam).

PETITION FOR REVIEW GRANTED; REMANDED.