

AUG 15 2011

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>SEYED ALI TABATABAEI,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p>Respondent.</p>
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No. 09-73205

Agency No. A077-323-924

MEMORANDUM\*

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

Submitted August 11, 2011\*\*

Before: THOMAS, SILVERMAN, and CLIFTON, Circuit Judges.

Seyed Ali Tabatabaei, a native and citizen of Iran, petitions for review of the Board of Immigration Appeals’ order dismissing his appeal from an immigration judge’s (“IJ”) denial of his motion to reopen. We have jurisdiction under 8 U.S.C. § 1252. We review for abuse of discretion the denial of a motion to reopen.

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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).

*Hernandez v. Mukasey*, 524 F.3d 1014, 1017 (9th Cir. 2008). We deny the petition for review.

The agency did not abuse its discretion by denying Tabatabaei's motion to reopen as untimely where he filed it more than 90 days after the IJ's final administrative order, *see* 8 C.F.R. § 1003.23(b)(1), and failed to establish that he qualified for an exception to the filing deadline or for equitable tolling of the deadline.

In his opening brief, Tabatabaei fails to address, and thereby waives any challenge to, the agency's denial of his motion for failure to establish that he acted with the due diligence required for equitable tolling or for failure to file an asylum application in conjunction with the motion, as required by 8 C.F.R. § 1003.23(b)(3). *See Martinez-Serrano v. INS*, 94 F.3d 1256, 1259-60 (9th Cir. 1996) (holding issues which are not specifically raised and argued in a party's opening brief are waived).

In light our disposition, we need not reach Tabatabaei's remaining contentions.

**PETITION FOR REVIEW DENIED.**