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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>YINGMING ZHANG,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p>Respondent.</p>
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No. 10-72357

Agency No. A096-345-998

MEMORANDUM\*

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

Submitted April 17, 2012\*\*

Before: LEAVY, PAEZ, and BEA, Circuit Judges.

Yingming Zhang, a native and citizen of China, 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 under 8 U.S.C. § 1252. We review for abuse of discretion the denial of a motion to reopen, *Iturribarria v.*

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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).

*INS*, 321 F.3d 889, 894 (9th Cir. 2003), and we deny the petition for review.

The BIA did not abuse its discretion in denying Zhang's motion to reopen where he filed the motion more than four years after the BIA issued its final order of removal, *see* 8 C.F.R. § 1003.2(c)(2), failed to demonstrate the due diligence required to obtain equitable tolling of the filing deadline, *see Iturribarria*, 321 F.3d at 897, and failed to present any evidence of changed circumstances in China in order to qualify for the regulatory exception to the filing deadline, *see* 8 C.F.R. § 1003.2(c)(3)(ii).

Because the BIA's untimeliness determination was dispositive, we do not address Zhang's remaining contentions.

We deny Zhang's motion for judicial notice of documents that were not presented to the BIA. *See Fisher v. INS*, 79 F.3d 955, 963 (9th Cir. 1996).

**PETITION FOR REVIEW DENIED.**