

AUG 14 2012

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>FREDERIC MAZARIEGOS SANTOS,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p>Respondent.</p>
--

No. 10-71968

Agency No. A078-073-859

MEMORANDUM*

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

Submitted August 8, 2012**

Before: ALARCÓN, BERZON, and IKUTA, Circuit Judges.

Frederic Mazariegos Santos, a native and citizen of Guatemala, 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

* 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).

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 in denying Mazariegos Santos's motion to reopen as untimely where he filed the motion more than seven years after his final order of removal, *see* 8 C.F.R. § 1003.2(c)(2) (motion to reopen must be filed within 90 days of final order), and failed to show the due diligence required to obtain equitable tolling of the filing deadline, *see Iturribarria*, 321 F.3d at 897 (equitable tolling is available where petitioner demonstrates due diligence in discovering the deception, fraud, or error that prevented timely filing).

Because the BIA's untimeliness determination is dispositive, we do not reach Mazariegos Santos's contentions concerning the departure bar and the merits of his ineffective assistance and due process claims.

Contrary to Mazariegos Santos's contention, the BIA did not abuse its discretion by addressing the issue of changed country conditions where his motion to reopen included a request for asylum, withholding of removal, and relief under the Convention Against Torture, as well as evidence of recent economic developments in Guatemala. *See* 8 C.F.R. § 1003.2(c)(3)(ii).

Mazariegos Santos's unopposed request for judicial notice is granted.

PETITION FOR REVIEW DENIED.