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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>IMRAN KHAN,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p>Respondent.</p>
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No. 11-70679

Agency No. A078-650-715

MEMORANDUM*

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

Submitted October 9, 2012**

Before: RAWLINSON, MURGUIA, and WATFORD, Circuit Judges.

Imran Khan, a native and citizen of Fiji, petitions for review of the Board of Immigration Appeals’ (“BIA”) order dismissing his appeal from an immigration judge’s 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

* 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).

a motion to reopen and review de novo claims of due process violations.

Mohammed v. Gonzales, 400 F.3d 785, 791 (9th Cir. 2005). We deny the petition for review.

The BIA did not abuse its discretion in denying Khan's motion to reopen based on ineffective assistance by his three former attorneys. Khan did not establish actual deficient performance by his first attorney, where the attorney withdrew his applications for relief and accepted voluntary departure to allow petitioner to immigrate to Canada to join his Canadian citizen wife. *See Torres-Chavez v. Holder*, 567 F.3d 1096, 1100-02 (9th Cir. 2009). As to the subsequent attorneys, Khan did not establish prejudice from their failure to file a motion to reopen, where his declaration states that he met with the attorneys after the applicable filing deadline. *See* 8 C.F.R. § 1003.2(c)(2) (a motion to reopen must be filed within 90 days of the final administrative order); *Mohammed*, 400 F.3d at 793-94 (prejudice results when counsel's actions may have affected the outcome of proceedings).

PETITION FOR REVIEW DENIED.