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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>BIJAI CHAND,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p>Respondent.</p>

No. 11-72791

Agency No. A044-955-792

MEMORANDUM*

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

Submitted November 13, 2012**

Before: CANBY, TROTT, and W. FLETCHER, Circuit Court Judges.

Bijai Chand, a native and citizen of Fiji, petitions for review of the Board of Immigration Appeals' ("BIA") order denying his motion to reopen removal proceedings 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. *Avagyan v. Holder*, 646 F.3d 672, 674 (9th Cir. 2011). We deny the petition for review.

The BIA did not abuse its discretion in denying Chand's motion to reopen as untimely where he filed the motion more than six 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 allege ineffective assistance against his third attorney who represented him between July 2009 and November 2010, *see Avagyan*, 646 F.3d at 679-80 (equitable tolling is available to a petitioner who is prevented from filing because of deception, fraud or error, and exercised due diligence in discovering such circumstances).

PETITION FOR REVIEW DENIED.