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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>ROGELIO CONCHAS-FERNANDEZ,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p>Respondent.</p>

No. 11-72189

Agency No. A092-294-084

MEMORANDUM*

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

Submitted December 19, 2012**

Before: GOODWIN, WALLACE, and FISHER, Circuit Judges.

Rogelio Conchas-Fernandez, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals’ (“BIA”) order denying his second 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, and review de novo questions of law. *Mohammed v. Gonzales*, 400 F.3d 785, 791-92 (9th Cir. 2005). We deny the petition for review.

The BIA did not abuse its discretion in denying Conchas-Fernandez's motion to reopen where petitioner failed to establish prejudice arising from the alleged ineffective assistance of counsel. *See Singh v. Ashcroft*, 367 F.3d 1182, 1189 (9th Cir. 2004) (presumption of prejudice resulting from counsel's failure to file a brief may be rebutted where petitioner is unable to "show plausible grounds for relief").

In light of our disposition, we need not address Conchas-Fernandez's claim regarding equitable tolling.

PETITION FOR REVIEW DENIED.