

APR 22 2013

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>ONOFRE CATALAN, a.k.a. Jeff Catalan, a.k.a. Onofre Catalan-Garcia,</p> <p style="text-align: center;">Petitioner,</p> <p style="text-align: center;">v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p style="text-align: center;">Respondent.</p>

No. 12-71243

Agency No. A041-985-272

MEMORANDUM*

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

Submitted April 16, 2013**

Before: CANBY, IKUTA, and WATFORD, Circuit Judges.

Onofre Catalan, a native and citizen of Guatemala, petitions pro se 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

* 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).

jurisdiction under 8 U.S.C. § 1252. We review for abuse of discretion the denial of motions to reopen, *Avagyan v. Holder*, 646 F.3d 672, 674 (9th Cir. 2011), and we deny the petition for review.

The BIA did not abuse its discretion in denying Catalan's motion to reopen as untimely and number-barred where he filed the second motion almost four years after his final order of removal, *see* 8 C.F.R. § 1003.2(c)(2) (party may file one motion to reopen and motion must be filed within 90 days of final order), and failed to show the due diligence required for equitable tolling of the filing deadline, *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).

In light of our disposition, we need not reach Catalan's remaining contentions.

PETITION FOR REVIEW DENIED.