

SEP 30 2013

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>GONZALO ESTRADA-RIOS,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p>Respondent.</p>
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No. 12-72128

Agency No. A092-922-201

MEMORANDUM*

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

Submitted September 24, 2013**

Before: RAWLINSON, N.R. SMITH, and CHRISTEN, Circuit Judges.

Gonzalo Estrada-Rios, a native and citizen of Mexico, petitions for review of an order of the Board of Immigration Appeals (“BIA”) denying his motion to reopen deportation proceedings. Our jurisdiction is governed by 8 U.S.C. § 1252. We review for abuse of discretion the BIA’s denial of a motion to reopen and

* 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).

review de novo claims of ineffective assistance of counsel. *Singh v. Ashcroft*, 367 F.3d 1182, 1185 (9th Cir. 2004). We deny in part and dismiss in part the petition for review.

The BIA did not abuse its discretion by denying Estrada-Rios's motion to reopen due to his failure to demonstrate that his former attorney's untimely filing of his first petition for review prejudiced the outcome of his deportation proceedings, where that petition for review presented no plausible grounds for success on the merits. *See Rojas-Garcia v. Ashcroft*, 339 F.3d 814, 826 (9th Cir. 2003) (holding that the absence of "plausible grounds for relief" rebuts the presumption of prejudice); *cf. Singh*, 367 F.3d at 1190 (stating that the presumption of prejudice is sustained if the petitioner's claim "could plausibly succeed on the merits").

We lack jurisdiction to consider Estrada-Rios's challenges to his underlying order of deportation or the BIA's August 9, 2011, order denying his first motion to reopen, because this petition for review is untimely as to those orders. *See Membreno v. Gonzales*, 425 F.3d 1227, 1229 (9th Cir. 2005) (en banc).

PETITION FOR REVIEW DENIED in part; DISMISSED in part.