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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>JUAN JASSO RAMIREZ,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p>Respondent.</p>
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No. 12-71227

Agency No. A089-267-911

MEMORANDUM*

On Petition for Review of an Order of the

Submitted September 24, 2013**

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

Juan Jasso Ramirez, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals’ (“BIA”) order denying his motion to reopen removal proceedings and to reinstate his voluntary departure order. 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, *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 as untimely Jasso Ramirez's motion to reopen in order to reinstate voluntary departure, where the motion was filed after his removal order became final, *see* 8 C.F.R. § 1003.2(c)(2) (motion to reopen must be filed within 90 days of final order), and Jasso Ramirez failed to show the due diligence required for equitable tolling of the filing deadline, *see Avagyan*, 646 F.3d at 679-80 (no diligence where petitioner "[a]pparently. . .took no affirmative steps to investigate" whether prior counsel adequately prepared claim after having reason to suspect deficient performance).

In his opening brief, Jasso Ramirez failed to raise, and therefore waived, any challenge to the BIA's denial of his motion to reopen based on ineffective assistance of counsel with respect to the filing of an untimely petition for review. *See Rizk v. Holder*, 629 F.3d 1083, 1091 n. 3 (9th Cir. 2011) (a petitioner waives an issue by failing to raise it in the opening brief).

PETITION FOR REVIEW DENIED.

