

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

OCT 25 2013

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

SALVADOR ORLANDO SIFONTES,

Petitioner,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 12-72111

Agency No. A091-614-656

MEMORANDUM*

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

Submitted October 15, 2013**

Before: FISHER, GOULD, and BYBEE, Circuit Judges.

Salvador Orlando Sifontes, a native and citizen of El Salvador, petitions pro se for review of an order of the Board of Immigration Appeals (“BIA”) denying his 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 BIA’s denial of a

* 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).

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

The BIA did not abuse its discretion by denying Sifontes's motion to reopen due to his failure to demonstrate prejudice from his former attorney's improper filing of his first motion to reopen and failure to inform him of his right to petition for review of the agency's rejection of that motion, where his first motion to reopen presented no plausible grounds for success on the merits either in the first instance before the BIA or on review before this court. *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").

To the extent that Sifontes seeks to renew his motion for a stay of removal, we deny this request as moot.

PETITION FOR REVIEW DENIED.