

DEC 18 2013

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>QIQUAN LI,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p>Respondent.</p>

No. 12-72147

Agency No. A096-057-789

MEMORANDUM*

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

Submitted December 17, 2013**

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

Qiquan Li, a native and citizen of China, petitions for review of the Board of Immigration Appeals' order dismissing his appeal from an immigration judge's decision denying his motion to reopen removal proceedings conducted in absentia. We have jurisdiction under 8 U.S.C. § 1252. We review for abuse of discretion the

* 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).

denial of a motion to reopen, *Avagyan v. Holder*, 646 F.3d 672, 678 (9th Cir. 2011), and we deny the petition for review.

The agency did not abuse its discretion in denying Li's motion to reopen as untimely where it was filed over six years after the date of his order of removal, *see* 8 C.F.R. § 1003.23(b)(4)(ii), and Li 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 establishes deception, fraud or error, and exercised due diligence in discovering such circumstances).

In his opening brief, Li fails to raise, and therefore has waived, any challenge regarding lack of notice of his hearing. *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.