

DEC 20 2013

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>MAURICIO BELTRAN,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p>Respondent.</p>

No. 12-73018

Agency No. A094-177-824

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.

Mauricio Beltran, a native and citizen of El Salvador, petitions for review of the Board of Immigration Appeals’ (“BIA”) order denying his motion to reopen alleging ineffective assistance of counsel. We have jurisdiction under 8 U.S.C. § 1252. We review for abuse of discretion the denial of a motion to reopen,

* 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).

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 Beltran's motion to reopen as untimely where he filed it three years after his 2008 final order of removal, *see* 8 C.F.R. § 1003.2(c)(2), and he failed to establish that he qualified for equitable tolling of the filing deadline, *see Avagyan*, 646 F.3d at 679-80 (equitable tolling is available to a petitioner who establishes that he suffered from deception, fraud or error, and exercised due diligence in discovering such circumstances). The evidence is insufficient to establish diligence between the time Beltran hired his second attorney in 2008 and the time he filed the motion in 2011.

PETITION FOR REVIEW DENIED.