

MAR 14 2014

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

WALTER IVAN RIVERA-AYALA,

Petitioner,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 12-71597

Agency No. A077-531-708

MEMORANDUM*

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

Submitted March 10, 2014**

Before: PREGERSON, LEAVY, and MURGUIA, Circuit Judges.

Walter Ivan Rivera-Ayala, a native and citizen of Honduras, petitions for review of the Board of Immigration Appeals’ (“BIA”) order dismissing his appeal from an immigration judge’s order denying his motion to reconsider. 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 reconsider and review de novo questions of law. *Mohammed v. Gonzales*, 400 F.3d 785, 791-92 (9th Cir. 2005). We deny the petition for review.

The BIA did not abuse its discretion in denying Rivera-Ayala's motion to reconsider, *see* 8 C.F.R. § 1003.2(b), where his prior motion to reopen was filed more than eight years after his final order of removal, and he failed to establish the due diligence required to equitably toll the filing deadline, *see* 8 C.F.R.

§ 1003.2(c)(2) (motions to reopen generally must be filed within 90 days of final order of removal); *Avagyan v. Holder*, 646 F.3d 672, 679, 682 (9th Cir. 2011) (petitioner may obtain equitable tolling when prevented from filing because of deception, fraud, or error where petitioner "made reasonable efforts to pursue relief until [he] learned of counsel's ineffectiveness").

PETITION FOR REVIEW DENIED.