

JUL 30 2014

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>JAYESH D. PATEL,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p>Respondent.</p>

No. 07-71800

Agency No. A073-949-648

MEMORANDUM*

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

Submitted July 22, 2014**

Before: GOODWIN, CANBY, and CALLAHAN, Circuit Judges.

Jayesh D. Patel, a native and citizen of India, petitions for review of the Board of Immigration Appeals’ (“BIA”) order denying his motion to reopen. 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, 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 Patel's motion to reopen as untimely where it was filed more than eight years after the BIA's July 23, 1998, order dismissing his underlying appeal, and Patel failed to demonstrate he qualified for an exception to the filing deadline or show the due diligence required for equitable tolling. *See* 8 C.F.R. § 1003.2(c)(2)-(3); *Avagyan v. Holder*, 646 F.3d 672, 678-80 (9th Cir. 2011). It follows that Patel's due process claim fails. *See Lata v. INS*, 204 F.3d 1241, 1246 (9th Cir. 2000) (requiring error and prejudice for a petitioner to prevail on a due process claim).

Contrary to Patel's contention, the BIA provided sufficient reasoning in its decision. *See Najmabadi v. Holder*, 597 F.3d 983, 990 (9th Cir. 2010)

In light of our disposition, we do not reach Patel's remaining contentions.

PETITION FOR REVIEW DENIED.