

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

FEB 19 2015

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

DRAYTON P V D BATEPOLA, AKA
Puwakpitiya Vithanalage Dharmakirthi
Drayton Batepola,

Petitioner,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 11-71374

Agency No. A070-637-299

MEMORANDUM*

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

Submitted February 10, 2015**
Pasadena, California

Before: KOZINSKI, CHRISTEN, and HURWITZ, Circuit Judges.

1. The BIA did not abuse its discretion in rejecting Batepola's untimely motion to reopen. The BIA reasonably determined that Batepola was not entitled to equitable tolling because he failed to pursue his claims of ineffective assistance 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).

counsel against his two prior attorneys with due diligence, *Iturribarria v. INS*, 321 F.3d 889, 897–99 (9th Cir. 2003), and failed to comply with the procedural requirements of *Matter of Lozada*, 19 I. & N. Dec. 637 (BIA 1988), *see Ontiveros-Lopez v. INS*, 213 F.3d 1121, 1123 (9th Cir. 2000). The BIA also reasonably determined that Batepola’s second attorney performed competently and that Batepola did not suffer prejudice as a result of following her advice.

2. The BIA did not abuse its discretion in concluding that Batepola failed to introduce new material evidence to support reopening based on changed country conditions. *See INS v. Doherty*, 502 U.S. 314, 323 (1992).

3. Batepola’s counsel’s motion to withdraw is granted.

PETITION DENIED; MOTION TO WITHDRAW GRANTED.