

MAY 20 2015

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

PHU LUC NAY,

Petitioner - Appellant,

v.

JEH JOHNSON, Secretary of Homeland  
Security; et al.,

Respondents - Appellees.

No. 14-55701

D.C. No. 2:13-cv-00195-RGK-R

MEMORANDUM\*

Appeal from the United States District Court  
for the Central District of California  
R. Gary Klausner, District Judge, Presiding.

Submitted May 13, 2015\*\*

Before: LEAVY, CALLAHAN, and M. SMITH, Circuit Judges.

Phu Luc Nay appeals pro se from the district court's order denying his motion for relief from judgment under Federal Rule of Civil Procedure 60(b)(2).

We have jurisdiction under 28 U.S.C. § 1291. We review for an abuse of

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\* 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).

discretion the denial of a motion for relief from judgment. *Casey v. Albertson's Inc.*, 362 F.3d 1254, 1257 (9th Cir. 2004). We affirm.

The district court did not abuse its discretion in denying Nay's motion for relief from judgment where Nay did not show that the evidence he sought to introduce was new evidence that could not have been discovered through due diligence within 28 days of the judgment. *See* Fed. R. Civ. P. 60(b)(2); Fed. R. Civ. P. 59(b); *Feature Realty, Inc., v. City of Spokane*, 331 F.3d 1082, 1093 (9th Cir. 2003) (setting forth the three part test for relief from judgment under Rule 60(b)(2)).

In light of this disposition, we do not reach Nay's contention that the district court abused its discretion in determining that the purported new evidence would not have changed its prior decision. *See Matus-Leva v. United States*, 287 F.3d 758, 760 (9th Cir. 2002) (where the requirements for relief are conjunctive, failure to meet any one of them is fatal).

**AFFIRMED.**