

MAY 21 2015

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JOSE LUIS AGUIRRE,

Petitioner,

v.

LORETTA E. LYNCH, Attorney General,

Respondent.

No. 13-72832

Agency No. A088-965-089

MEMORANDUM*

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

Submitted May 13, 2015**

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

Jose Luis Aguirre, a native and citizen of El Salvador, petitions for review of the Board of Immigration Appeals' order dismissing his appeal from an immigration judge's order denying his motion to reopen removal proceedings conducted in absentia. We have jurisdiction under 8 U.S.C. § 1252. We review

* 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).

for abuse of discretion the denial of a motion to reopen. *Avagyan v. Holder*, 646 F.3d 672, 674 (9th Cir. 2011). We deny the petition for review.

The agency did not abuse its discretion by denying as untimely Aguirre's motion to reopen where he filed the motion approximately two years after issuance of his order of removal in absentia, *see* 8 C.F.R. § 1003.23(b)(4)(ii), and failed to demonstrate the due diligence necessary to warrant equitable tolling of the filing deadline, *see Iturribarria v. INS*, 321 F.3d 889, 897 (9th Cir. 2003) (equitable tolling is available "when a petitioner is prevented from filing because of deception, fraud, or error, as long as the petitioner acts with due diligence in discovering the deception, fraud, or error"); *Avagyan*, 646 F.3d at 679 (diligence requires petitioner to "take reasonable steps to investigate [any] suspected fraud" or make "reasonable efforts to pursue relief").

In light of this disposition, we need not reach Aguirre's remaining contentions regarding ineffective assistance of counsel. *See Mendez-Alcaraz v. Gonzales*, 464 F.3d 842, 844 (9th Cir. 2006) (declining to reach nondispositive challenges to a BIA order).

PETITION FOR REVIEW DENIED.