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U.S. COURT OF APPEALS

## NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ZHONGGUI CAO,

Petitioner,

v.

LORETTA E. LYNCH, Attorney General,

Respondent.

No. 13-71494

Agency No. A099-402-038

MEMORANDUM\*

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

Submitted June 22, 2015\*\*

Before: HAWKINS, GRABER, and W. FLETCHER, Circuit Judges.

Zhonggui Cao, a native and citizen of China, petitions for review of the Board of Immigration Appeals' ("BIA") order denying his motion to reopen removal proceedings based on ineffective assistance of counsel. We have jurisdiction under 8 U.S.C. § 1252. We review for abuse of discretion the denial 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).

a motion to reopen, *Iturribarria v. INS*, 321 F.3d 889, 894 (9th Cir. 2003), and we review de novo questions of law, including claims of due process violations due to ineffective assistance, *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 Cao's motion to reopen for failure to establish prejudice from his former attorney. *See Iturribarria*, 321 F.3d at 903 (BIA did not abuse its discretion in concluding that petitioner did not qualify for relief in question); *see also Jiang v. Holder*, 611 F.3d 1086, 1093-94 (9th Cir. 2010) (spouse of victim of forced abortion not per se eligible for refugee status); *He v. Holder*, 749 F.3d 792, 795-96 (9th Cir. 2014) (record did not compel finding petitioner engaged in resistance to China's one-child policy or suffered persecution). We reject Cao's contention that the BIA required him to publicly oppose China's birth control policy to establish his resistance to it.

**PETITION FOR REVIEW DENIED.**