

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JAN 26 2016

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

VICTOR VELAZQUEZ-NEGRETE,

Petitioner,

v.

LORETTA E. LYNCH, Attorney General,

Respondent.

No. 14-71075

Agency No. A088-320-880

MEMORANDUM*

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

Submitted January 20, 2016**

Before: CANBY, TASHIMA, and NGUYEN, Circuit Judges.

Victor Velazquez-Negrete, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' ("BIA") order denying his motion to reopen removal proceedings on the basis of ineffective assistance of counsel. 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. *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 Velazquez-Negrete's motion to reopen as untimely where Velazquez-Negrete filed the motion more than four years after his final order of removal, *see* 8 C.F.R. § 1003.2(c)(2), and has not demonstrated the due diligence necessary to warrant equitable tolling of the filing deadline, *see Avagyan v. Holder*, 646 F.3d 672, 679 (9th Cir. 2011) (equitable tolling is available to an alien who is prevented from filing a motion to reopen due to deception, fraud, or error, as long as the alien exercises due diligence in discovering such circumstances).

Because untimeliness is dispositive, we do not reach Velazquez-Negrete's remaining contentions.

PETITION FOR REVIEW DENIED.