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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MINGYUAN LIU,

Petitioner,

v.

LORETTA E. LYNCH, Attorney General,

Respondent.

No. 14-70206

Agency No. A087-827-143

MEMORANDUM*

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

Submitted March 15, 2016**

Before: GOODWIN, LEAVY, and CHRISTEN, Circuit Judges.

Mingyuan Liu, 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

* 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. *Avagyan v. Holder*, 646 F.3d 672, 674 (9th Cir. 2011). We deny the petition for review.

The BIA did not abuse its discretion by denying as untimely Lui's motion to reopen based on the alleged ineffective assistance of his former counsel, where he filed the motion more than a year after his final order of removal, *see* 8 C.F.R. § 1003.23(b), and failed to establish ineffective assistance of counsel to warrant equitable tolling of the filing deadline, *see Avagyan*, 646 F.3d at 679-80 (equitable tolling is available to an alien who is prevented from timely filing a motion to reopen due to deception, fraud or error, as long as petitioner exercises due diligence in discovering such circumstances).

In light of this disposition, we do not reach Lui's remaining contentions concerning prejudice.

Lui's motion to supplement the record is denied.

PETITION FOR REVIEW DENIED.