

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

MAR 23 2016

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

RAUF ZAYADINOVICH GAMIDOV,  
  
Petitioner,  
  
v.  
  
LORETTA E. LYNCH, Attorney General,  
  
Respondent.

No. 13-74282

Agency No. A075-710-476

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.

Rauf Zayadinovich Gamidov, a native and citizen of Georgia, petitions for review of the Board of Immigration Appeals' order dismissing his appeal from an immigration judge's decision denying his motion to reopen removal proceedings on the basis of ineffective assistance of counsel. We have jurisdiction under 8

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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).

U.S.C. § 1252. We review for abuse of discretion the denial of a motion to reopen. *Mohammed v. Gonzales*, 400 F.3d 785, 791 (9th Cir. 2005). We deny the petition for review.

The agency did not abuse its discretion in denying Gamidov's motion to reopen as untimely, where Gamidov filed the motion nearly six years after his final order of removal, *see* 8 C.F.R. § 1003.23(b)(1), and he 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 the agency's due diligence determination is dispositive, we do not reach Gamidov's remaining contentions.

**PETITION FOR REVIEW DENIED.**