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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

RAFAEL GARCIA-GUTIERREZ,

Petitioner,

v.

LORETTA E. LYNCH, Attorney General,

Respondent.

No. 13-72820

Agency No. A077-335-780

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.

Rafael Garcia-Gutierrez, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' ("BIA") order denying his motion to reopen and dismissing his appeal from an immigration judge's ("IJ") decision denying his motion to reopen. We have jurisdiction under 8 U.S.C. § 1252. We review for

* 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).

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 BIA did not abuse its discretion in denying Garcia-Gutierrez' motion to reopen based on ineffective assistance of counsel, where Garcia-Gutierrez filed the motion more than eight years after his final order of removal, *see* 8 C.F.R. § 1003.2(c)(2), and did not establish the due diligence required for equitable tolling of the filing deadline, *see Iturribarria v. INS*, 321 F.3d 889, 897 (9th Cir. 2003) (equitable tolling is available to a petitioner who is prevented from timely filing motion to reopen due to deception, fraud or error, as long as petitioner exercises due diligence in discovering such circumstances); *Avagyan v. Holder*, 646 F.3d 672, 679 (9th Cir. 2011) (due diligence requires petitioner to take reasonable steps to investigate any suspected fraud or error, or if he is ignorant of such circumstances, make reasonable efforts to pursue relief).

The record does not support Garcia-Gutierrez' contention that the BIA failed to accept as true the facts stated in his declaration in support of his motion to reopen. *See Avagyan*, 646 F.3d at 678-79.

In light of this disposition, we do not reach Garcia-Gutierrez' remaining contentions.

PETITION FOR REVIEW DENIED.