

NOV 04 2016

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

EDMER R. NIETO,

Petitioner,

v.

LORETTA E. LYNCH, Attorney General,

Respondent.

No. 15-71405

Agency No. A094-168-094

MEMORANDUM*

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

Submitted October 25, 2016**

Before: LEAVY, SILVERMAN, and GRABER, Circuit Judges.

Edmer R. Nieto, a native and citizen of El Salvador, petitions for review of the Board of Immigration Appeals' ("BIA") order denying his motion to reopen.

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 Ninth Circuit Rule 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 (9th Cir. 2005). We deny the petition for review.

The BIA did not abuse its discretion by denying Nieto's motion to reopen as untimely, where the motion was filed more than one year after his final order of removal, and Nieto failed to establish the due diligence required for equitable tolling of the filing deadline. *See* 8 C.F.R. § 1003.2(c)(2); *Avagyan v. Holder*, 646 F.3d 672, 679 (9th Cir. 2011) (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).

We reject Nieto's contentions that the BIA failed to analyze all relevant evidence and did not sufficiently address the issue of equitable tolling. *See Najmabadi v. Holder*, 597 F.3d 983, 990-91 (9th Cir. 2010) (holding the BIA adequately considered evidence and sufficiently announced its decision).

In light of this disposition, we do not reach Nieto's remaining contentions regarding eligibility for NACARA relief.

PETITION FOR REVIEW DENIED.