

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

OCT 2 2017

FOR THE NINTH CIRCUIT

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

VIKTOR NIKOLAYEVICH
OSTAPENKO,

Petitioner,

v.

JEFFERSON B. SESSIONS III, Attorney
General,

Respondent.

No. 16-71883

Agency No. A071-320-466

MEMORANDUM*

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

Submitted September 26, 2017**

Before: SILVERMAN, TALLMAN, and N. R. SMITH, Circuit Judges.

Viktor Nikolayevich Ostapenko, a native and citizen of Moldova, petitions pro se for review of the Board of Immigration Appeals' ("BIA") order denying his third motion to reopen removal proceedings. We have jurisdiction under 8 U.S.C. § 1252. We review for abuse of discretion the BIA's denial of a motion to reopen,

* 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).

Toufighi v. Mukasey, 538 F.3d 988, 992 (9th Cir. 2008), and we deny the petition for review.

The BIA did not abuse its discretion in denying Ostapenko's third motion to reopen as untimely where it was filed more than two years after the BIA's final order, *see* 8 C.F.R. § 1003.2(c)(2), and where Ostapenko failed to establish prima facie eligibility for the relief he sought, *see* 8 C.F.R. § 1003.2(c)(3)(ii); *Toufighi*, 538 F.3d at 996 (the BIA may deny a motion to reopen for failure to establish prima facie eligibility for the relief sought).

PETITION FOR REVIEW DENIED.