

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

NOV 3 2017

FOR THE NINTH CIRCUIT

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

JOSE ALEJANDRO VASQUEZ-TREJO,

No. 16-70434

Petitioner,

Agency No. A094-303-898

v.

MEMORANDUM*

JEFFERSON B. SESSIONS III, Attorney
General,

Respondent.

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

Submitted October 23, 2017**

Before: LEAVY, WATFORD, and FRIEDLAND, Circuit Judges.

Jose Alejandro Vasquez-Trejo, a native and citizen of El Salvador, petitions for review of the Board of Immigration Appeals' ("BIA") order denying his motion to reopen removal proceedings. We have jurisdiction under 8 U.S.C. § 1252. We review for abuse of discretion the denial of a motion to reopen. *Avagyan*

* 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).

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

The BIA did not abuse its discretion in denying Vasquez-Trejo's motion to reopen as untimely, where it was filed more than four years after his final order of removal, *see* 8 C.F.R. § 1003.2(c)(2), and Vasquez-Trejo failed to establish the due diligence required for equitable tolling of the filing deadline, *see Avagyan*, 646 F.3d at 679 (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 the alien exercises due diligence in discovering such circumstances).

Because the due diligence determination is dispositive, we do not reach Vasquez-Trejo's remaining contentions regarding compliance with *Matter of Lozada*, 19 I. & N. Dec. 637 (BIA 1988), or the alleged ineffective assistance of prior counsel. *See Simeonov v. Ashcroft*, 371 F.3d 532, 538 (9th Cir. 2004) (courts and agencies are not required to decide issues unnecessary to the results they reach).

PETITION FOR REVIEW DENIED.