

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JUN 15 2018

FOR THE NINTH CIRCUIT

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

SAMUEL MONTERO-PEREYDA, AKA
Samuel Mondedo-Cadedo,

Petitioner,

v.

JEFFERSON B. SESSIONS III, Attorney
General,

Respondent.

No. 16-73185

Agency No. A205-489-582

MEMORANDUM*

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

Submitted June 12, 2018**

Before: RAWLINSON, CLIFTON, and NGUYEN, Circuit Judges.

Samuel Montero-Pereyda, a native and citizen of Mexico, 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

* 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).

review for abuse of discretion the denial of a motion to reopen. *Martinez-Hernandez v. Holder*, 778 F.3d 1086, 1088 (9th Cir. 2015). We deny the petition for review.

The BIA did not abuse its discretion in denying Montero-Pereyda's motion to reopen based on ineffective assistance of counsel for failure to show prejudice. *See Mohammed v. Gonzales*, 400 F.3d 785, 793-94 (9th Cir. 2005) (to demonstrate ineffective assistance of counsel, petitioner must show counsel failed to perform with sufficient competence and that petitioner was prejudiced by counsel's performance; to show prejudice, petitioner must show counsel's performance was so inadequate it may have affected the outcome of proceedings).

Because the prejudice determination is dispositive, we do not reach Montero-Pereyda's contentions regarding former counsel's performance. *See Simeonov v. Ashcroft*, 371 F.3d 532, 538 (9th Cir. 2004).

Montero-Pereyda's contention that the BIA applied the incorrect standard with regard to his claim under the Convention Against Torture is not supported.

PETITION FOR REVIEW DENIED.