

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

NOV 12 2021

FOR THE NINTH CIRCUIT

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

SIOKAPESI ANAUKIMOANA
VILINGIA, AKA Siokapesi Hola,

Petitioner,

v.

MERRICK B. GARLAND, Attorney
General,

Respondent.

No. 18-71717

Agency No. A088-771-044

MEMORANDUM*

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

Submitted November 8, 2021**

Before: CANBY, TASHIMA, and MILLER, Circuit Judges.

Siokapesi Anaukimoana Vilingia, a native and citizen of Tonga, petitions for review of the Board of Immigration Appeals' ("BIA") order denying her 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. *Mohammed*

* 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. Gonzales, 400 F.3d 785, 791-92 (9th Cir. 2005). We deny the petition for review.

The BIA did not abuse its discretion in denying Vilingia's untimely motion to reopen based on ineffective assistance of counsel where she failed to establish prejudice from the allegedly deficient performance of her former attorney. *See* 8 U.S.C. § 1229a(c)(7)(C)(i); *Mohammed*, 400 F.3d at 793 (requiring prejudice to state valid claim of ineffective assistance of counsel); *see also Lona v. Barr*, 958 F.3d 1225, 1230 (9th Cir. 2020) (“[E]quitable tolling is available where, despite all due diligence, the party invoking the doctrine is unable to obtain vital information bearing on the existence of the claim.” (citation and internal quotation marks omitted)). To the extent Vilingia contends the BIA erred in its analysis of her motion, we reject the contention as unsupported by the record.

The stay of removal remains in place until issuance of the mandate.

PETITION FOR REVIEW DENIED.