

SEP 30 2010

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>NARENDRA PRASAD,</p> <p style="text-align: center;">Petitioner,</p> <p>v.</p> <p>MICHAEL B. MUKASEY,</p> <p style="text-align: center;">Respondent.</p>
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No. 08-71664

Agency No. A078-652-077

MEMORANDUM*

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

Submitted September 13, 2010**

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

Narendra Prasad, a native and citizen of Fiji, petitions for review of the Board of Immigration Appeals' ("BIA") order denying his motion to reopen alleging ineffective assistance of counsel. We have jurisdiction under

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

8 U.S.C. § 1252. Reviewing for abuse of discretion, *Iturribarria v. INS*, 321 F.3d 889, 894 (9th Cir. 2003), we deny the petition for review.

The BIA did not abuse its discretion in denying Prasad's motion to reopen because it was filed more than two years after the BIA's May 12, 2005, order dismissing the underlying appeal, *see* 8 C.F.R. § 1003.2(c)(2), and Prasad failed to demonstrate that he acted with the due diligence required for equitable tolling, *see Iturribarria*, 321 F.3d at 897 (equitable tolling available "when a petitioner is prevented from filing because of deception, fraud, or error, as long as the petitioner acts with due diligence"); *see also Singh v. Gonzales*, 491 F.3d 1090, 1096-97 (9th Cir. 2007).

In light of our disposition, we do not reach Prasad's remaining contentions.

PETITION FOR REVIEW DENIED.