

MAR 24 2011

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

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

SAMUEL WOLDESEMAIT,

Petitioner,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 09-71434

Agency No. A029-234-362

MEMORANDUM*

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

Submitted March 8, 2011**

Before: FARRIS, LEAVY, and BYBEE, Circuit Judges.

Samuel Woldesemait, a native and citizen of Ethiopia, petitions for review of the Board of Immigration Appeals' ("BIA") order denying his motion to reopen based on ineffective assistance of counsel. We have jurisdiction under 8 U.S.C.

* 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).

§ 1252. We review for abuse of discretion the denial of a motion to reopen, *Iturribarria v. INS*, 321 F.3d 889, 894 (9th Cir. 2003), and we deny the petition for review.

The BIA did not abuse its discretion by denying Woldesemait's motion to reopen because the motion was filed more than 15 years after the BIA's February 7, 1994, order dismissing the underlying appeal, *see* 8 C.F.R. § 1003.2(c)(2), and Woldesemait failed to demonstrate that he acted with the due diligence required to warrant equitable tolling of the filing deadline, *see Iturribarria*, 321 F.3d at 897.

PETITION FOR REVIEW DENIED.