

NOT FOR PUBLICATION

MAY 28 2014

UNITED STATES COURT OF APPEALS

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

FOR THE NINTH CIRCUIT

MIAN MOHAMMAD ZULQARNAIN,

Petitioner,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 13-70784

Agency No. A044-896-595

MEMORANDUM*

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

Submitted May 13, 2014**

Before: CLIFTON, BEA, and WATFORD, Circuit Judges.

Mian Mohammad Zulqarnain, a native and citizen of Pakistan, petitions for review of an order of the Board of Immigration Appeals (“BIA”) 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,

* 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).

Avagyan v. Holder, 646 F.3d 672, 674 (9th Cir. 2011), and review de novo whether the agency applied a correct legal standard, *Kawashima v. Holder*, 615 F.3d 1043, 1057 n.8 (9th Cir. 2010). We deny the petition for review.

The BIA did not abuse its discretion by denying as untimely Zulqarnain's motion to reopen based on ineffective assistance of counsel because he filed the motion more than five years after issuance of his final order of removal, *see* 8 C.F.R. § 1003.2(c)(2), and he failed to demonstrate the due diligence necessary to warrant equitable tolling of the filing deadline, *see Avagyan*, 646 F.3d at 679 (ascertaining due diligence based on "whether petitioner made reasonable efforts to pursue relief").

The BIA applied the correct legal standard to Zulqarnain's motion to reopen. *See Mendez-Castro v. Mukasey*, 552 F.3d 975, 980 (9th Cir. 2009) (concluding that "the IJ applied the correct legal standard" where "the IJ expressly cited and applied [relevant case law] in rendering its decision, which is all our review requires").

PETITION FOR REVIEW DENIED.