

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

OCT 4 2016

FOR THE NINTH CIRCUIT

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

DAVID CHAVEZ-MACIAS,

Petitioner,

v.

LORETTA E. LYNCH, Attorney General,

Respondent.

No. 13-72243

Agency No. A092-827-571

MEMORANDUM*

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

Submitted September 27, 2016**

Before: TASHIMA, SILVERMAN, and M. SMITH, Circuit Judges.

David Chavez-Macias, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' ("BIA") order denying his motion to reopen deportation proceedings. We have jurisdiction under 8 U.S.C. § 1252. We review for abuse of discretion the denial of a motion to reopen. *Avagyan v. Holder*, 646

* 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).

F.3d 672, 678 (9th Cir. 2011). We deny the petition for review.

The BIA did not abuse its discretion in determining Chavez-Macias failed to show the due diligence required to equitably toll the filing deadline for his motion to reopen, where the motion was filed more than 16 years after the final administrative order, *see* 8 C.F.R. § 1003.2(c)(2), and Chavez-Macias offers no argument or evidence to support a finding of diligence, *see Avagyan*, 646 F.3d at 679 (equitable tolling is available to an alien who is prevented from timely filing a motion to reopen due to deception, fraud, or error, as long as petitioner exercises due diligence in discovering such circumstances).

Because the diligence determination is dispositive, we need not remand in light of this court's intervening decision in *Hernandez v. Holder*, 738 F.3d 1099 (9th Cir. 2013).

PETITION FOR REVIEW DENIED.