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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CARLOS A. PEREZ CASTELLANOS,

Petitioner,

v.

LORETTA E. LYNCH, Attorney General,

Respondent.

No. 14-72933

Agency No. A075-666-517

MEMORANDUM*

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

Submitted April 26, 2016**

Before: McKEOWN, WARDLAW, and PAEZ, Circuit Judges.

Carlos A. Perez Castellanos, a native and citizen of El Salvador, petitions for review of the Board of Immigration Appeals' ("BIA") order dismissing his appeal from an immigration judge's decision denying his motion to reopen removal proceedings conducted in absentia. We have jurisdiction under 8 U.S.C. § 1252.

* 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).

We review for abuse of discretion the denial of a motion to reopen. *Avagyan v. Holder*, 646 F.3d 672, 674 (9th Cir. 2011). We grant the petition for review and remand.

The agency abused its discretion in denying Perez Castellanos' motion to reopen on the basis that he did not establish the due diligence necessary for equitable tolling of the motion to reopen filing deadline. Perez Castellanos attempted to redress his failure to appear with his attorney, and reasonably believed that his attorney had administratively closed his case based on his Temporary Protected Status ("TPS") where Perez Castellanos' TPS was renewed for the subsequent six years. *See id.* at 679 (the question of due diligence depends on when a reasonable person would suspect his attorney's misconduct and whether the petitioner then took reasonable steps to investigate it or pursue immigration relief, where "[t]ypically, an alien is diligent if he continues to pursue relief and relies on the advice of counsel as to the means of obtaining that relief"); *Mejia-Hernandez v. Holder*, 633 F.3d 818, 824-25 (petitioner was diligent when, after his motion was denied for lack of a filing fee, he relied on counsel's incorrect assurance that it was the immigration court's mistake and that he would remedy the situation).

Accordingly, we grant Perez Castellanos' petition and remand to the BIA for

further proceedings consistent with this opinion.

PETITION FOR REVIEW GRANTED; REMANDED.