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NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

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

FOR THE NINTH CIRCUIT

<p>HAMIMU MUSSA,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p>Respondent.</p>
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No. 08-74948

Agency No. A079-578-538

MEMORANDUM*

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

Submitted February 21, 2012**

Before: FERNANDEZ, McKEOWN, and BYBEE, Circuit Judges.

Hamimu Mussa, a native and citizen of Rwanda, petitions for review of the Board of Immigration Appeals' order denying his motion to reopen. We review for abuse of discretion the denial of a motion to reopen, and we review de novo questions of law, *Iturribarria v. INS*, 321 F.3d 889, 894 (9th Cir. 2003). We deny the petition for review.

* 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).

The BIA did not abuse its discretion in denying Mussa’s motion to reopen as untimely where the motion was filed over three years after the BIA’s final decision, *see* 8 C.F.R. § 1003.2(c)(2), and Mussa failed to present evidence of changed circumstances in Rwanda to qualify for an exception to the time limit, *see* 8 C.F.R. § 1003.2(c)(3)(ii); *Malty v. Ashcroft*, 381 F.3d 942, 945 (9th Cir. 2004) (“The critical question is . . . whether circumstances have changed sufficiently that a petitioner who previously did not have a legitimate claim for asylum now has a well-founded fear of future persecution.”). Further, the BIA did not abuse its discretion in denying Mussa’s motion to reopen based on ineffective assistance of counsel, because he failed to show that he was prejudiced by his former counsel’s conduct. *See Iturribarria*, 321 F.3d at 899-90 (prejudice results when the performance of counsel “was so inadequate that it may have affected the outcome of the proceedings”) (internal quotation marks omitted).

PETITION FOR REVIEW DENIED.