

OCT 05 2016

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

PEDRO RODRIGUEZ DURAN,

Petitioner,

v.

LORETTA E. LYNCH, Attorney General,

Respondent.

No. 14-70012

Agency No. A095-449-983

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.

Pedro Rodriguez Duran, a native and citizen of Mexico, petitions pro se for review of the Board of Immigration Appeals' order dismissing his appeal from an immigration judge's decision denying his motion to reopen removal proceedings 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 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).

§ 1252. We review for abuse of discretion the denial of a motion to reopen. *Avagyan v. Holder*, 646 F.3d 672, 678 (9th Cir. 2011). We deny the petition for review.

The agency did not abuse its discretion in denying Rodriguez Duran's motion to reopen as untimely where the motion was filed more than three years after his removal order became final, *see* 8 C.F.R. § 1003.2(c)(2), and Rodriguez Duran failed to establish the due diligence required for equitable tolling of the filing deadline, *see Avagyan*, 646 F.3d at 679 (equitable tolling is available to a petitioner who is prevented from filing because of deception, fraud or error, as long as the petitioner exercised due diligence in discovering such circumstances).

In light of our disposition, we do not reach Rodriguez Duran's remaining contention regarding tolling of the numerical bar. *See Simeonov v. Ashcroft*, 371 F.3d 532, 538 (9th Cir. 2004) (the court need not reach a contention when another dispositive determination has been made).

We deny Rodriguez Duran's request for remand for the purposes of prosecutorial discretion. *See Vilchiz-Soto v. Holder*, 688 F.3d 642, 644 (9th Cir. 2012) (order).

PETITION FOR REVIEW DENIED.