

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

FEB 22 2017

FOR THE NINTH CIRCUIT

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

ANTONIO ANSELMO MEZA,

Petitioner,

v.

JEFF B. SESSIONS, Attorney General,

Respondent.

No. 15-71998

Agency No. A095-310-310

MEMORANDUM*

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

Submitted February 14, 2017**

Before: GOODWIN, FARRIS, and FERNANDEZ, Circuit Judges.

Antonio Anselmo Meza, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' ("BIA") order 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, and review de novo questions

* 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).

of law. *Singh v. Ashcroft*, 367 F.3d 1182, 1185 (9th Cir. 2004). We deny the petition for review.

The BIA did not abuse its discretion in denying Meza's motion to reopen as untimely, where it was filed eight years after his final order of removal, *see* 8 C.F.R. § 1003.2(c)(2), and Meza failed to establish the due diligence required for equitable tolling of the filing deadline, *see Avagyan v. Holder*, 646 F.3d 672, 679 (9th Cir. 2011) (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 the alien exercises due diligence in discovering such circumstances).

Meza's contention that the BIA failed to consider facts and evidence submitted with his motion is not supported by the record. *See Lata v. INS*, 204 F.3d 1241, 1246 (9th Cir. 2000) (to prevail on a due process challenge, an alien must show error and prejudice).

Because the timeliness determination is dispositive, we do not address Meza's contentions regarding his 2005 proceedings and his eligibility for relief.

Meza's duplicative request for a stay of removal is denied as moot, and the temporary stay of removal shall continue in effect until the issuance of the mandate.

Meza's request for an abeyance is denied.

PETITION FOR REVIEW DENIED.