

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

NOV 20 2017

FOR THE NINTH CIRCUIT

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

ALVARO RIVAS-PINEDA,

No. 16-71420

Petitioner,

Agency No. A099-470-987

v.

MEMORANDUM*

JEFFERSON B. SESSIONS III, Attorney
General,

Respondent.

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

Submitted November 15, 2017**

Before: CANBY, TROTT, and GRABER, Circuit Judges.

Alvaro Rivas-Pineda, a native and citizen of El Salvador, 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. *Avagyan v. Holder*,

* 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).

646 F.3d 672, 674 (9th Cir. 2011). We deny the petition for review.

The BIA did not abuse its discretion in denying Rivas-Pineda's motion to reopen for failure to establish that he was prejudiced by the alleged ineffectiveness of his prior attorney where the BIA addressed issues on appeal despite them not being raised in Rivas-Pineda's brief, and where the BIA previously considered and rejected his purportedly new social group and also denied relief on a separate dispositive ground. *See Iturribarria v. INS*, 321 F.3d 889, 899 (9th Cir. 2003) ("To show a deprivation of due process caused by ineffective assistance of counsel, the alien must show that counsel's ineffective performance prejudiced h[im].") (citation omitted).

Because the prejudice determination is dispositive, we do not reach Rivas-Pineda's remaining contentions regarding compliance with *Matter of Lozada*, 19 I. & N. Dec. 637 (BIA 1988), or prior counsel's performance. *See Simeonov v. Ashcroft*, 371 F.3d 532, 538 (9th Cir. 2004) (courts and agencies are not required to decide issues unnecessary to the results they reach).

PETITION FOR REVIEW DENIED.