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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 MICHAEL HEGEWALD,

9 Petitioner,

10 v.

11 PATRICK GLEBE,

12 Respondent.

CASE NO. C14-5482 BHS

ORDER ADOPTING REPORT
AND RECOMMENDATION

13 This matter comes before the Court on the Report and Recommendation (“R&R”)
14 of the Honorable J. Richard Creatura, United States Magistrate Judge (Dkt. 16), and
15 Petitioner Michael Hegewald’s (“Hegewald”) objections to the R&R (Dkt. 17).

16 On October 30, 2014, Judge Creatura issued the R&R recommending that the
17 Court deny Hegewald’s petition because it is time-barred and Hegewald is not entitled to
18 equitable tolling. Dkt. 16. On November 17, 2014, Hegewald filed objections arguing
19 that he is entitled to equitable tolling. Dkt. 17. On November 25, 2014, the Government
20 responded to the objections. Dkt. 18.

21 The district judge must determine de novo any part of the magistrate judge’s
22 disposition that has been properly objected to. The district judge may accept, reject, or

1 modify the recommended disposition; receive further evidence; or return the matter to the
2 magistrate judge with instructions. Fed. R. Civ. P. 72(b)(3).

3 In this case, Hegewald argues that he is entitled to equitable tolling because he has
4 a mental impairment and because he was unable to secure legal assistance to file the
5 petition in a timely manner. Dkt. 17 at 4. Hegewald offered these same assertions to
6 Judge Creatura and they were rejected based on a lack of evidence to meet the high bar of
7 equitable tolling. *See* Dkt. 16 at 4–5. The Court also rejects Hegewald’s justifications
8 for failing to timely file because Hegewald has failed to meet the high burden of
9 establishing that he is entitled to equitable tolling. Neither reason put forth by Hegewald
10 shows extraordinary circumstances that prevented him from timely filing his petition.
11 Therefore, the Court having considered the R&R, Petitioner’s objections, and the
12 remaining record, does hereby find and order as follows:

- 13 (1) The R&R is **ADOPTED**;
- 14 (2) The Court **DENIES** Hegewald’s petition;
- 15 (3) The Court **DENIES** a Certificate of Appealability; and
- 16 (4) This action is **DISMISSED**.

17 Dated this 6th day of January, 2015.

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20 BENJAMIN H. SETTLE
21 United States District Judge
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