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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

EMEKA EKWUEME,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney
General,

Respondent.

No. 06-73205

Agency No. A72-785-967

MEMORANDUM*

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

Submitted February 26, 2008**

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

Emeka Ekwueme, a native and citizen of Nigeria, petitions for review of the Board of Immigration Appeals' ("BIA") decision denying his motion to reopen removal proceedings based on ineffective assistance of counsel. We have

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

jurisdiction pursuant to 8 U.S.C. § 1252. Reviewing for abuse of discretion, *Mohammed v. Gonzales*, 400 F.3d 785, 791 (9th Cir. 2005), we deny the petition for review.

The BIA did not abuse its discretion in denying Ekwueme’s motion to reopen as untimely when the motion was filed almost two years after the BIA’s March 10, 2004 final order. *See* 8 C.F.R. § 1003.2(c)(2) (motion to reopen must be filed no later than ninety days after the final administrative decision). Ekwueme did not demonstrate that he exercised due diligence in discovering his prior representative’s alleged error. *See Iturribarria v. INS*, 321 F.3d 889, 897 (9th Cir. 2003) (equitable tolling applies “during periods when a petitioner is prevented from filing because of deception, fraud, or error, as long as the petitioner acts with due diligence in discovering the deception, fraud, or error”).

Because the BIA relied on independent grounds to determine Ekwueme acted without due diligence, we need not address Ekwueme’s contention that the BIA improperly took judicial notice of extrinsic evidence.

PETITION FOR REVIEW DENIED.