

**NOT FOR PUBLICATION**

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

**FILED**

DEC 13 2007

CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS

JACK GLENNY TAEBENU,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney  
General,

Respondent.

No. 05-71517

Agency No. A96-351-726

MEMORANDUM\*

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

Submitted August 27, 2007\*\*

Before: WALLACE, LEAVY, and THOMAS, Circuit Judges.

Jack Glenny Taebenu, a native and citizen of Indonesia, petitions for review of the Board of Immigration Appeals' ("BIA") order upholding the immigration judge's order denying his motion to reopen proceedings due to ineffective

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\* 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).

assistance of counsel. We have jurisdiction under 8 U.S.C. § 1252. We review for abuse of discretion, *Mohammed v. Gonzales*, 400 F.3d 785, 791 (9th Cir. 2005), and we deny the petition for review.

The BIA did not abuse its discretion when it determined that Taebenu's motion to reopen was untimely. *See* 8 C.F.R. § 1003.2(c)(2) (an alien seeking to reopen proceedings before the BIA must file the motion to reopen no later than 90 days after the final administrative decision). Taebenu did not demonstrate that he exercised diligence in discovering his prior counsel's errors. *See Iturribarria v. INS*, 321 F.3d 889, 897 (9th Cir. 2003) (equitable tolling is available to a petitioner who establishes that he suffered from deception, fraud or error, and exercised due diligence in discovering such circumstances).

**PETITION FOR REVIEW DENIED.**