

FEB 15 2008

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ROSALIO PRIETO-MARISCAL, a.k.a.
Rosalio Prieto,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney
General,

Respondent.

No. 07-74390

Agency No. A98-345-369

MEMORANDUM *

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

Submitted February 11, 2008**

Before: WALLACE, LEAVY and RYMER, Circuit Judges.

This is a petition for review of the Board of Immigration Appeals' ("BIA") decision dismissing petitioner's appeal from the Immigration Judge's ("IJ") denial of cancellation of removal.

* 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).

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We have reviewed the response to the court's November 19, 2007 order to show cause and the government's motion to dismiss. To the extent petitioner challenges the IJ's finding that petitioner did not establish the requisite hardship to a qualifying relative, we conclude that petitioner has failed to raise a colorable constitutional or legal claim to invoke our jurisdiction over this petition for review. *See Martinez-Rosas v. Gonzales*, 424 F.3d 926 (9th Cir. 2005); *Torres-Aguilar v. INS*, 246 F.3d 1267, 1271 (9th Cir. 2001). Accordingly, respondent's motion to dismiss this petition for review for lack of jurisdiction is granted with respect to petitioner's claims regarding hardship. *See* 8 U.S.C. § 1252(a)(2)(B)(i); *Romero-Torres v. Ashcroft*, 327 F.3d 887, 892 (9th Cir. 2003); *Montero-Martinez v. Ashcroft*, 277 F.3d 1137, 1144 (9th Cir. 2002).

A review of the administrative record demonstrates that there is substantial evidence to support the BIA's decision that petitioner failed to establish continuous physical presence in the United States for a period of not less than ten years as required for cancellation of removal. *See* 8 U.S.C. § 1229b(b)(1)(A); *Lopez-Alvarado v. Ashcroft*, 381 F.3d 847, 851 (9th Cir. 2004). To the extent petitioner challenges the BIA's decision regarding continuous physical presence, we deny the petition because the questions raised by this petition for review are so insubstantial

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as not to require further argument. *See United States v. Hooton*, 693 F.2d 857, 858 (9th Cir. 1982) (per curiam).

Petitioner's contention that the BIA violated his due process rights by denying his motion to accept a late brief fails because the BIA has discretion whether to consider a late brief. *See* 8 C.F.R. §. 1003.3(c)(1).

All other pending motions are denied as moot. The temporary stay of removal and voluntary departure confirmed by Ninth Circuit General Order 6.4(c) and *Desta v. Ashcroft*, 365 F.3d 741 (9th Cir. 2004), shall continue in effect until issuance of the mandate.

PETITION FOR REVIEW DISMISSED in part, DENIED in part.