

OCT 10 2007

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

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

FOR THE NINTH CIRCUIT

MIGUEL GARCIA-BENITO,

Petitioner,

v.

PETER D. KEISLER,** Acting Attorney
General,

Respondent.

No. 07-70893

Agency No. A91-558-187

MEMORANDUM*

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

Submitted October 1, 2007***

Before: B. FLETCHER, BERZON and IKUTA, Circuit Judges.

The Clerk shall file the response to the order to show cause, received on
September 12, 2007.

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

** Peter D. Keisler is substituted for his predecessor, Alberto R. Gonzales, as Acting Attorney General of the United States, pursuant to Fed. R. App. P. 43(c)(2).

*** This 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 record and the response to the court's July 26, 2007 order to show cause. To the extent petitioner challenges the discretionary denial of his application for cancellation of removal pursuant to 8 U.S.C. § 1229b(a), petitioner has failed to raise a colorable constitutional or legal claim to invoke our jurisdiction over the petition. *See Torres-Aguilar v. INS*, 246 F.3d 1267, 1271 (9th Cir. 2001). Accordingly, the court *sua sponte* dismisses this petition for review for lack of jurisdiction with respect to the denial of cancellation of removal. *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).

We also conclude that the Board of Immigration Appeals did not abuse its discretion in denying petitioner's motion to remand to apply for asylum because petitioner failed to establish prima facie eligibility for that form of relief. *See* 8 C.F.R. § 1003.2(c); *Iturribarria v. INS*, 321 F.3d 889, 894 (9th Cir. 2003); *Ordonez v. INS*, 345 F.3d 777, 785 (9th Cir. 2003). Accordingly, this petition is denied in part because the questions raised by this petition for review with respect to the denial of petitioner's request for remand are so insubstantial as not to require further argument. *See United States v. Hooton*, 693 F.2d 857, 858 (9th Cir. 1982) (per curiam) (stating standard).

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All other pending motions are denied as moot.

PETITION FOR REVIEW DISMISSED in part, DENIED in part.