

DEC 10 2007

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

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

FOR THE NINTH CIRCUIT

<p>RAFAEL OROZCO RIVERA,</p> <p>Petitioner,</p> <p>v.</p> <p>MICHAEL B. MUKASEY, Attorney General,</p> <p>Respondent.</p>
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No. 05-73598

Agency No. A75-304-208

MEMORANDUM\*

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

Submitted December 3, 2007 \*\*

Before: GOODWIN, WALLACE, and FISHER, Circuit Judges.

Rafael Orozco Rivera, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals’ (“BIA”) order upholding an Immigration Judge’s (“IJ”) order denying his application for cancellation of removal. To the

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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).

extent we have jurisdiction, it is pursuant to 8 U.S.C. § 1252. We review the agency's continuous physical presence determination for substantial evidence. *See Ibarra-Flores v. Gonzales*, 439 F.3d 614, 618 (9th Cir. 2006). We deny in part and dismiss in part the petition for review.

Substantial evidence supports the agency's determination that Rivera did not meet the continuous physical presence requirement where he testified he entered the United States in 1989, stated in his asylum application that he entered in 1989, offered no documentary evidence of his presence from 1987 to 1989, and the Notice to Appear issued in 1997. *See id.* at 617-18.

We lack jurisdiction to review Rivera's due process claims, including his ineffective assistance of counsel claim because he failed to raise those issues before the BIA and thereby failed to exhaust his administrative remedies. *See Barron v. Ashcroft*, 358 F.3d 674, 678 (9th Cir. 2004).

The motion for abeyance is denied.

**PETITION FOR REVIEW DENIED in part; DISMISSED in part.**