

DEC 10 2007

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

SOFIA DUENAS GUTIERREZ,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney  
General,

Respondent.

No. 05-76061

Agency No. A75-301-922

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.

Sofia Duenas Gutierrez, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' order upholding an Immigration Judge's ("IJ") decision denying her application for cancellation of removal. We have

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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).

jurisdiction 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 review de novo claims of constitutional violations in immigration proceedings. *See Ram v. INS*, 243 F.3d 510, 516 (9th Cir. 2001). We deny the petition for review.

Substantial evidence supports the agency's determination that Duenas Gutierrez did not meet the continuous physical presence requirement where she credibly testified that she departed the United States for Mexico on October 2, 1987 and returned on January 6, 1988. *See* 8 U.S.C. § 1229b(d)(2) (departure of greater than 90 days breaks continuous physical presence).

Duenas Gutierrez's contention that the IJ violated due process by not questioning a discrepancy regarding the date of her departure did not make her hearing "so fundamentally unfair that [she] was prevented from reasonably presenting [her] case." *Colmenar v. INS*, 210 F.3d 967, 971 (9th Cir. 2000) (citation omitted). Moreover, Duenas Gutierrez failed to demonstrate that additional testimony may have affected the outcome of the proceedings. *See id.* (requiring prejudice to prevail on a due process challenge).

Duenas Gutierrez's remaining contentions are not persuasive.

**PETITION FOR REVIEW DENIED.**