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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

PORFIRIO GUTIERREZ-GRANADOS,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney
General,

Respondent.

No. 07-72061

Agency No. A93-222-563

MEMORANDUM*

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

Submitted November 13, 2007**

Before: McKEOWN, TALLMAN and CLIFTON, Circuit Judges.

Petitioner seeks review of the Board of Immigration Appeals' affirmance of the immigration judge's ("IJ") denial of his application for cancellation of removal. The IJ pretermitted petitioner's application, concluding that he lacked any

* 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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qualifying relatives for purposes of cancellation of removal.

We agree that petitioner's niece does not meet the statutory definition of "child" set forth in 8 U.S.C. § 1101(b)(1) and therefore cannot be considered a qualifying relative for purposes of cancellation of removal under 8 U.S.C. § 1229b(1)(D). *See Moreno-Morante v. Gonzales*, 490 F.3d 1172, 1176-77 (9th Cir. 2007) (holding that de facto parent-child relationship does not support a finding of qualifying-relative status). Petitioner's constitutional challenge to the statutory definition of "child" likewise fails. *Cf. INS v. Hector*, 479 U.S. 85, 88 (1986) (per curiam); *Moreno-Morante*, 490 F.3d at 1178. Accordingly, respondent's motion for summary denial of the petition for review is granted.

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 DENIED.