

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JUL 23 2008

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

ARVIN HERIBERTO ALVARENGA-
HERNANDEZ,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney
General,

Respondent.

No. 08-70623

Agency No. A72-930-554

MEMORANDUM *

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

Submitted July 14, 2008**

Before: SCHROEDER, LEAVY and IKUTA, Circuit Judges.

This is a petition for review of the Board of Immigration Appeals' ("BIA")

* 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).

order dismissing the appeal of an Immigration Judge's decision finding him ineligible for a section 212(h) waiver of inadmissibility and adjustment of status. Respondent's unopposed motion for summary disposition is granted because the questions raised by this petition for review 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). Petitioner is ineligible for the relief he seeks because he is a legal permanent resident who was convicted of an aggravated felony. *See* 8 U.S.C. §1101(a)(43)(F). Assault with a deadly weapon, in violation of California Penal Code § 245(a)(1), is a crime of violence. *See Ortiz-Magana v. Mukasey*, 523 F.3d 1042, 1048 (9th Cir. 2008). Accordingly, this petition for review is denied.

All other pending motions are denied as moot. The temporary stay of removal confirmed by Ninth Circuit General Order 6.4(c) shall continue in effect until issuance of the mandate.

PETITION FOR REVIEW DENIED.