

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

AUG 05 2008

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

RENE BARRIOS-CANDIDO,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney
General,

Respondent.

Nos. 06-72229

06-73308

Agency No. A90-043-991

MEMORANDUM*

On Petitions for Review of Orders of the
Board of Immigration Appeals

Submitted July 22, 2008**

Before: B. FLETCHER, THOMAS, and WARDLAW, Circuit Judges.

In these consolidated cases, Rene Barrios-Candido, a native and citizen of Guatemala, petitions for review of the Board of Immigration Appeals' ("BIA") order dismissing his appeal from an immigration judge's decision denying him

* 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).

relief under former Immigration and Nationality Act § 212(c), and the BIA's order denying his motion to reconsider. Our jurisdiction is governed by 8 U.S.C. § 1252. We dismiss the petition for review in No. 06-72229, and deny the petition for review in No. 06-73308.

We lack jurisdiction to review the BIA's dismissal of Barrios-Candido's direct appeal. *See Vargas-Hernandez v. Gonzales*, 497 F.3d 919, 923 (9th Cir. 2007) ("Discretionary decisions, including whether or not to grant § 212(c) relief, are not reviewable. 8 U.S.C. § 1252(a)(2)(B)(ii).").

Reviewing de novo, *Cano-Merida v. INS*, 311 F.3d 960, 964 (9th Cir. 2002), we conclude that Barrios-Candido did not establish prejudice resulting from the BIA's failure to send his prior counsel a briefing schedule. The BIA therefore correctly denied Barrios-Candido's motion to reconsider. *See id.* at 965 (in addition to demonstrating a due process violation, a petitioner must show that the violation was prejudicial and potentially affected his proceedings' outcome).

Barrios-Candido's counsel is reminded that unpublished dispositions filed before January 1, 2007 may not be cited to this court. *See* 9th Cir. R. 36-3(c).

No. 06-72229: PETITION FOR REVIEW DISMISSED.

No. 06-73308: PETITION FOR REVIEW DENIED.