

**SEP 27 2007**

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U.S. COURT OF APPEALS**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

MARIE-GABRIELLE JOCELYN  
PHILIPPE-AUGUSTE,

Petitioner,

v.

PETER D. KEISLER\*, Acting Attorney  
General,

Respondent.

No. 05-74923

Agency No. A70-572-416

MEMORANDUM\*\*

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

Submitted September 24, 2007\*\*\*

Before: CANBY, TASHIMA, and RAWLINSON, Circuit Judges.

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\* Peter D. Keisler is substituted for his predecessor, Alberto R. Gonzales, as Acting Attorney General of the United States, pursuant to Fed. R. App. P. 43(c)(2).

\*\* 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).

Marie-Gabrielle Jocelyn Philippe-Auguste, a native and citizen of Haiti, petitions for review of the Board of Immigration Appeals' ("BIA") order dismissing her appeal from an immigration judge's ("IJ") order denying her application for voluntary departure. We deny the petition for review.

The record supports the BIA's determination that Philippe-Auguste failed to show by clear and convincing evidence that she was eligible for voluntary departure. *See* 8 C.F.R. § 1240.26(c)(1)(iv), (2).

We review de novo claims of constitutional violations in immigration proceedings. *See Ram v. INS*, 243 F.3d 510, 516 (9th Cir. 2001). Philippe-Auguste's contention that she was denied due process because the BIA relied on a ground different from that relied upon by the IJ to deny her application for voluntary departure is unavailing. *See Lin v. Gonzales*, 472 F.3d 1131, 1136, n.1 (9th Cir. 2007). Moreover, Philippe-Auguste has not demonstrated prejudice. *See Colmenar v. INS*, 210 F.3d 967, 971 (9th Cir. 2000) (requiring prejudice to prevail on a due process challenge).

**PETITION FOR REVIEW DENIED.**