

DEC 26 2008

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>HUMBERTO MARISCAL-CARO,</p> <p style="text-align: center;">Petitioner,</p> <p>v.</p> <p>MICHAEL B. MUKASEY, Attorney General,</p> <p style="text-align: center;">Respondent.</p>

Nos. 05-75321
05-76721
06-71133

Agency No. A092-417-510

MEMORANDUM *

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

Submitted December 17, 2008**

Before: GOODWIN, TROTT, and RYMER, Circuit Judges.

In these consolidated petitions, Humberto Mariscal-Caro, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' ("BIA") orders dismissing his appeal from an immigration judge's ("IJ") decision

* 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).

denying his application for cancellation of removal (No. 05-75321), denying his motion to reopen and reconsider (No. 05-76721), and reissuing its July 5, 2005 decision in amended form (No. 06-71133). Our jurisdiction is governed by 8 U.S.C. § 1252. We review legal and constitutional issues de novo.

Vasquez-Zavala v. Ashcroft, 324 F.3d 1105, 1107 (9th Cir. 2003). We dismiss the petition for review in No. 05-75321, deny the petition for review in No. 05-76721, and dismiss in part and deny in part the petition for review in No. 06-71133.

In his opening brief, Mariscal-Caro fails to address, and therefore has waived any challenge to, the BIA's denial of his motion to reopen and reconsider. *See Martinez-Serrano v. INS*, 94 F.3d 1256, 1259-60 (9th Cir. 1996).

We lack jurisdiction to review the agency's discretionary determination that Mariscal-Caro failed to show exceptional and extremely unusual hardship to a qualifying relative. *See Martinez-Rosas v. Gonzales*, 424 F.3d 926, 929-30 (9th Cir. 2005). Moreover, Mariscal-Caro's contention that the IJ violated his due process rights by disregarding evidence is not supported by the record and therefore does not amount to a colorable constitutional claim. *Id.* at 930.

We also lack jurisdiction to review the agency's discretionary denial of voluntary departure. *See* 8 U.S.C. § 1229c(f). Mariscal-Caro's due process claim

regarding the denial of voluntary departure is not colorable. *See Martinez-Rosas*, 424 F.3d at 930.

Contrary to Mariscal-Caro's contention, the agency's interpretation of the hardship standard in his case falls within the broad range authorized by the statute. *See Ramirez-Perez v. Ashcroft*, 336 F.3d 1001, 1004-06 (9th Cir. 2003); *cf. Alvarez Figueroa v. Mukasey*, 543 F.3d 487 (9th Cir. 2008). Mariscal-Caro's contention regarding moral character is unavailing because the agency denied cancellation of removal solely on the ground of hardship.

Because the BIA reissued its July 5, 2005 order dismissing Mariscal-Caro's appeal, Mariscal-Caro has not demonstrated prejudice from the BIA's alleged failure properly to notify him of its decision. *See Lara-Torres v. Ashcroft*, 383 F.3d 968, 976 (9th Cir. 2004), *amended by* 404 F.3d 1105 (9th Cir. 2005).

Finally, we dismiss the petition for review in No. 05-75321 as moot.

No. 05-75321: PETITION FOR REVIEW DISMISSED.

No. 05-76721: PETITION FOR REVIEW DENIED.

**No. 06-71133: PETITION FOR REVIEW DISMISSED in part;
DENIED in part.**