

DEC 29 2008

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>PABLO ISAAC LOPEZ GARCIA,</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>
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No. 06-74965

Agency No. A079-521-521

MEMORANDUM\*

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

Submitted December 17, 2008\*\*

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

Pablo Isaac Lopez Garcia, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' ("BIA") order dismissing his appeal from an immigration judge's removal order and denying his motion to remand

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\* 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).

based on ineffective assistance of counsel. We have jurisdiction under 8 U.S.C. § 1252. We review for abuse of discretion the denial of a motion to remand. *Movsisian v. Ashcroft*, 395 F.3d 1095, 1098 (9th Cir. 2005). We review de novo claims of due process violations in removal proceedings, including ineffective assistance of counsel claims. *Iturribarria v. INS*, 321 F.3d 889, 894 (9th Cir. 2003). We deny the petition for review.

We agree with the BIA that the performance of Lopez Garcia's former counsel did not result in prejudice, and thus Lopez Garcia's claim of ineffective assistance of counsel fails. *See Rojas-Garcia v. Ashcroft*, 339 F.3d 814, 826 (9th Cir. 2003) (petitioner must show prejudice to prevail on an ineffective assistance of counsel claim). Lopez Garcia's contention that the BIA applied the wrong standard in determining whether prior counsel's performance resulted in prejudice is not supported by the record. *See Iturribarria*, 321 F.3d at 900 (petitioners must demonstrate that counsel's performance may have affected the outcome of the proceedings).

Lopez Garcia's remaining contention is unpersuasive.

**PETITION FOR REVIEW DENIED.**