NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

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

ALVINO GUARDIOLA-HERNANDEZ, Petitioner, v. ERIC H. HOLDER , Attorney General, Respondent.	No. 06-75444 Agency No. A008-558-825 MEMORANDUM*

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

Argued and Submitted February 5, 2009
Seattle, Washington

Before: B. FLETCHER, RYMER and FISHER, Circuit Judges.

Alvino Guardiola-Hernandez (Guardiola) petitions for review of the decision of the Board of Immigration Appeals (BIA) affirming the decision of the immigration judge (IJ) finding Guardiola removable as charged and ineligible for cancellation of removal, and denying Guardiola's claim for ineffective assistance

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* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

of counsel in the proceedings before the IJ. We dismiss his petition to the extent he challenges his final order of removal, and deny his petition with respect to his claim of ineffective assistance of counsel.

Guardiola asserts that he was wrongly denied the opportunity to apply for cancellation of removal. However, the BIA judged him removable because he was convicted under Oregon Revised Statute § 475.992(1)(b) (renumbered in 2005 as § 475.840) for delivery of methamphetamine, an aggravated felony. We agree with the BIA's determination that Guardiola was convicted of an aggravated felony. *Rendon v. Mukasey*, 520 F.3d 967, 974 (9th Cir. 2008); *see* 21 U.S.C. § 841(a) & (b)(1)(C); 21 U.S.C § 802(11); 21 U.S.C. § 812(c). Thus this court lacks jurisdiction to review his final order of removal. 8 U.S.C. § 1252(a)(2)(C); 8 U.S.C. § 1227(a)(2)(A)(iii). Likewise, Guardiola is ineligible for cancellation of removal. 8 U.S.C. § 1229b(a)(3).

Guardiola also claims ineffective assistance of counsel in the proceedings before the IJ. Because Guardiola had committed an aggravated felony, he was ineligible for cancellation of removal and cannot demonstrate prejudice. Therefore, we deny his claim of ineffective assistance of counsel. *See Mohammed v. Gonzales*, 400 F.3d 785, 793 (9th Cir. 2005).

DISMISSED IN PART; DENIED IN PART.