

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

FEB 18 2009

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

FRANCISCO TORRES GONZALEZ,

Petitioner,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 05-71723

Agency No. A075-485-037

MEMORANDUM*

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

Submitted February 13, 2009**
Pasadena, California

Before: FRIEDMAN,** BEA, and IKUTA, Circuit Judges.

Torres Gonzalez petitions pro se for review of the decision of the Board of Immigration Appeals, which summarily affirmed the immigration judge's denial of

* 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).

*** The Honorable Daniel M. Friedman, Senior United States Circuit Judge for the Federal Circuit, sitting by designation.

his application for cancellation of removal. However, we lack jurisdiction to consider Torres Gonzalez's appeal of the agency's discretionary determination that he failed to demonstrate exceptional and extremely unusual hardship to his three United States citizen children. *See Mendez-Castro v. Mukasey*, 552 F.3d 975, 979 (9th Cir. 2009).

Torres Gonzalez also argues that his wife is entitled to cancellation of removal because the IJ erred in determining that she did not have ten years of continuous physical presence. Torres Gonzalez's wife first entered the United States on March 15, 1988, and the Notice to Appear was filed on May 20, 1997. This is less than the ten years required for cancellation of removal. Accordingly, the claim is meritless.

Affirmed.