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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

EDWIN PAGTAKHAN CALAYAG, Petitioner, v. ERIC H. HOLDER Jr., Attorney General, Respondent.	No. 07-70020 Agency No. A097-368-227 MEMORANDUM[*]

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

Submitted December 15, 2009[**]

Before: GOODWIN, WALLACE, and FISHER, Circuit Judges.

Edwin Pagtakhan Calayag, a native and citizen of the Philippines, petitions for review of the Board of Immigration Appeals' order dismissing his appeal from an immigration judge's ("IJ") decision denying his motion to continue and

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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 concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

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ordering him removed. We have jurisdiction under 8 U.S.C. § 1252. We review de novo claims of due process violations, *Sandoval-Luna v. Mukasey*, 526 F.3d 1243, 1246 (9th Cir. 2008) (per curiam), and we deny the petition for review.

The agency did not violate due process in denying Calayag's motion to continue because the IJ had previously granted two continuances and Calayag's eligibility for an S visa remained speculative at the time of his last hearing. *See Larita-Martinez v. INS*, 220 F.3d 1092, 1095 (9th Cir. 2000) (requiring substantial prejudice to prevail on a due process claim); *see also Sandoval-Luna*, 526 F.3d at 1247 (no prejudice where IJ denied a continuance because relief only available speculatively).

PETITION FOR REVIEW DENIED.