

UNITED STATES COURT OF APPEALS

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U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

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| <p>ROBERTO HUERTA-LOPEZ,</p> <p style="text-align: center;">Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER Jr., Attorney General,</p> <p style="text-align: center;">Respondent.</p> |
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No. 06-75314

Agency No. A076-611-031

MEMORANDUM\*

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

Submitted September 14, 2009\*\*

Before: SILVERMAN, RAWLINSON, and CLIFTON, Circuit Judges.

Roberto Huerta-Lopez, a native and citizen of Mexico, petitions pro se for review of the Board of Immigration Appeals' ("BIA") order denying his motion to reopen. We have jurisdiction pursuant to 8 U.S.C. § 1252. We review for abuse of

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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).

discretion the denial of a motion to reopen, and review de novo questions of law, including claims of due process violations due to ineffective assistance of counsel. *Mohammed v. Gonzales*, 400 F.3d 785, 791-92 (9th Cir. 2005). We deny the petition for review.

During proceedings, Huerta-Lopez conceded that he lacked a qualifying relative for purposes of cancellation of removal under 8 U.S.C. § 1229b(b)(1)(D). We agree with the BIA's conclusion that Huerta-Lopez failed to establish that counsel did not perform with sufficient competence where Huerta-Lopez then withdrew his application for cancellation of removal and waived his right to appeal in favor of a grant of voluntary departure under 8 U.S.C. § 1229c(a). *See Mohammed*, 400 F.3d at 793 (to prevail on a claim of ineffective assistance of counsel, petitioner must first demonstrate that counsel failed to perform with sufficient competence); *see also Biwot v. Gonzales*, 403 F.3d 1094, 1098 (9th Cir. 2005) (waiver of right to appeal must be "considered and intelligent").

Huerta-Lopez's remaining contentions are unpersuasive.

**PETITION FOR REVIEW DENIED.**