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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>MAURICIO VICENTE MARTINEZ-CRUZ,</p> <p style="text-align: center;">Petitioner,</p> <p style="text-align: center;">v.</p> <p>ERIC H. HOLDER Jr., Attorney General,</p> <p style="text-align: center;">Respondent.</p>

No. 07-74132

Agency No. A037-568-963

MEMORANDUM *

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

Argued and Submitted June 5, 2009
Las Vegas, Nevada

Before: GOULD and RAWLINSON, Circuit Judges, and BEISTLINE, ** District Judge.

Maurico Vicenti Martinez-Cruz petitions for review of a Board of Immigration Appeals (BIA) decision dismissing his appeal from the Immigration Judge's (IJ) denial of his request to terminate removal proceedings. Martinez-Cruz

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The Honorable Ralph R. Beistline, United States District Judge for the District of Alaska, sitting by designation.

contends that he obtained derivative citizenship under 8 U.S.C. § 1432(a)(3), now repealed.¹ We conclude that Martinez-Cruz did not establish that he had derivative citizenship by a preponderance of the evidence, and we deny the petition. *See* 8 C.F.R. § 341.2(c).

Martinez-Cruz argues that he is entitled to relief because the IJ incorrectly applied a clear and convincing evidence standard. However, because “the BIA conduct[ed] a de novo review of the record” and did not expressly adopt the IJ’s decision, “our review is limited to the decision of the BIA.” *Scales v. INS*, 232 F.3d 1159, 1162 (9th Cir. 2000). We reject petitioner’s argument about the clear and convincing evidence standard applied by the IJ. The record does not indicate that the BIA applied any incorrect standard or burden of proof.

To prevail on his derivative citizenship claim, Martinez-Cruz must show by a preponderance of the evidence that “there has been a legal separation of the [biological] parents.” 8 U.S.C. § 1432(a)(3). We conclude that a legal separation has not been shown. The record contains no evidence that Martinez-Cruz’s biological parents were ever married under either California or El Salvador law. Because Martinez-Cruz has not established that his parents had married, he cannot

¹The statute was repealed by the Child Citizenship Act of 2000 (“CCA”), P.L. 106-395. *See Minasyan v. Gonzales*, 401 F.3d 1069, 1076 n.11 (9th Cir. 2005). The parties agree that the repeal does not affect this case.

show that they legally separated, and his derivative citizenship claim fails. *See Barthelemy v. Ashcroft*, 329 F.3d 1062, 1065 (9th Cir. 2003).

PETITION DENIED.