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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

GABRIEL FELIX-FERNANDEZ,

Petitioner,

v.

ERIC H. HOLDER Jr., Attorney General,

Respondent.

No. 06-72259

Agency No. A079-528-975

MEMORANDUM*

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

Submitted July 14, 2009**

Before: SCHROEDER, THOMAS, and WARDLAW, Circuit Judges.

Gabriel Felix-Fernandez, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' ("BIA") order dismissing his appeal from an

* 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).

immigration judge's decision denying his request for permission to withdraw his application for admission to the United States. We dismiss the petition for review.

We lack jurisdiction to review the agency's discretionary denial of Felix-Fernandez's request to withdraw his application for admission. *See Avendano-Ramirez v. Ashcroft*, 365 F.3d 813, 819 (9th Cir. 2004).

We deny Felix-Fernandez's motion to remand to the BIA for consideration of his eligibility for cancellation of removal. *See Ortiz v. INS*, 179 F.3d 1148, 1152 (9th Cir. 1999) (where an alien becomes newly eligible for relief "the proper procedure is for the alien to move the BIA to reopen proceedings, not to petition this Court to compel the BIA to reopen").

We stay the mandate for 90 days from the date this disposition is filed to allow Felix-Fernandez an opportunity to file a motion to reopen with the BIA. *See id.*

PETITION FOR REVIEW DISMISSED; MANDATE STAYED FOR 90 DAYS.