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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>JESUS ZUNIGA-FLORES,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER Jr., Attorney General,</p> <p>Respondent.</p>
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Nos. 06-72309
06-73639

Agency No. A092-169-842

MEMORANDUM*

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

Submitted November 17, 2009**

Before: ALARCÓN, TROTT, and TASHIMA, Circuit Judges.

In these consolidated petitions for review, Jesus Zuniga-Flores, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals’ (“BIA”) order dismissing his appeal from an immigration judge’s order finding

* 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).

that he knowingly participated in alien smuggling in violation of 8 U.S.C. § 1182(a)(6)(E)(i), as well as an order denying his motion to reconsider. Our jurisdiction is governed by 8 U.S.C. § 1252. We review de novo questions of law and due process claims, for abuse of discretion the denial of a motion to reconsider, and for substantial evidence the agency's factual findings. *Mohammed v. Gonzales*, 400 F.3d 785, 791-92 (9th Cir. 2005). We deny in part and dismiss in part the petition for review in No. 06-72309, and deny the petition for review in No. 06-73639.

Zuniga-Flores' due process rights were not violated by the admission of his Form I-213 (Record of Deportable/Inadmissible Alien) because the form was probative, and its admission was not fundamentally unfair. *See Espinoza v. INS*, 45 F.3d 308, 310-11 (9th Cir.1995) (noting that "[t]he sole test for admission of evidence [in a deportation proceeding] is whether the evidence is probative and its admission is fundamentally fair," and rejecting argument that a Form I-213 is inadmissible as hearsay). Moreover, the IJ properly denied Zuniga-Flores' request to cross-examine the preparer of his Form I-213, because Zuniga-Flores did not produce probative evidence that cast doubt on the document's reliability. *Id.*

According to the Form I-213, Zuniga-Flores drove the car to the border and acknowledged to border agents that he knew the alien passenger was

undocumented. Zuniga-Flores therefore “provided some form of affirmative assistance to the illegally entering alien.” *See Altamirano v. Gonzales*, 427 F.3d 586, 592 (9th Cir. 2005).

We lack jurisdiction to review the agency’s denial of cancellation of removal as a matter of discretion. *See Gomez-Lopez v. Ashcroft*, 393 F.3d 882, 884 (9th Cir. 2005) (noting 8 U.S.C. § 1252(a)(2)(B) precludes judicial review of discretionary decisions denying cancellation of removal).

The BIA was within its discretion in denying Zuniga-Flores’ motion to reconsider because the motion failed to identify any error of fact or law in the BIA’s prior decision. *See* 8 C.F.R. § 1003.2(b)(1); *Socop-Gonzalez v. INS*, 272 F.3d 1176, 1180 n.2 (9th Cir. 2001) (en banc).

Zuniga-Flores’ remaining contentions are unpersuasive.

IN 06-72309, PETITION FOR REVIEW DENIED in part; DISMISSED in part.

IN 06-73639, PETITION FOR REVIEW DENIED.