

DEC 07 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

OMAR ADRIAN RODRIGUEZ-PEREZ,

Petitioner,

v.

ERIC H. HOLDER Jr., Attorney General,

Respondent.

No. 04-70084

Agency No. A073-825-972

MEMORANDUM*

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

Submitted November 17, 2009**

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

Omar Adrian Rodriguez-Perez, 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 ("IJ") decision denying voluntary departure and a

* 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).

waiver of inadmissibility under 8 U.S.C. § 1182(h). Our jurisdiction is governed by 8 U.S.C. § 1252. We review de novo questions of law and constitutional claims. *Vasquez-Zavala v. Ashcroft*, 324 F.3d 1105, 1107 (9th Cir. 2003). We dismiss in part and deny in part the petition for review.

We lack jurisdiction to review Rodriguez-Perez's contention that the IJ erred and violated due process by failing to inform him of the availability of pre-hearing voluntary departure because Rodriguez-Perez failed to raise this contention before the BIA. *See Barron v. Ashcroft*, 358 F.3d 674, 678 (9th Cir. 2004).

The agency did not err in requiring Rodriguez-Perez to establish the good moral character required under 8 U.S.C. § 1229c(b)(1)(B). *See* 8 C.F.R. § 1240.26(b)(1)(i)(A)-(B).

Assuming without deciding that Rodriguez-Perez has standing to raise his equal protection challenge to 8 U.S.C. § 1182(h), we conclude that Rodriguez-Perez's claim is foreclosed on the merits by *Taniguchi v. Schultz*, 303 F.3d 950, 957-58 (9th Cir. 2002).

PETITION FOR REVIEW DISMISSED in part; DENIED in part.