

DEC 14 2009

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>ROBERTO JIMENEZ-HUERTA,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER Jr., Attorney General,</p> <p>Respondent.</p>

No. 06-72635

Agency No. A076-665-976

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.

Roberto Jimenez-Huerta, 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 ("IJ") decision denying his application for cancellation of removal. We dismiss the petition for review.

We lack jurisdiction to review the agency's discretionary determination that Jimenez-Huerta failed to show exceptional and extremely unusual hardship to a qualifying relative. *See Martinez-Rosas v. Gonzales*, 424 F.3d 926, 930 (9th Cir. 2005). We need not reach Jimenez-Huerta's challenge to the IJ's continuous physical presence determination because the agency's hardship determination is dispositive. *See* 8 U.S.C. § 1229b(b)(1).

We lack jurisdiction to consider Jimenez-Huerta's due process challenge because he failed to exhaust it before the BIA. *See Barron v. Ashcroft*, 358 F.3d 674, 678 (9th Cir. 2004).

We lack jurisdiction to consider Jimenez-Huerta's claim that the BIA improperly denied his request for voluntary departure. *See* 8 U.S.C. § 1229c(f); *Kalilu v. Mukasey*, 548 F.3d 1215, 1217 n.1 (9th Cir. 2008) (per curiam).

PETITION FOR REVIEW DISMISSED.