

DEC 30 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>MARTHA ALMENDAREZ-ARUJO,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER Jr., Attorney General,</p> <p>Respondent.</p>

No. 06-70491

Agency No. A073-809-469

MEMORANDUM*

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

Submitted December 15, 2009**

Before: GOODWIN, WALLACE, and FISHER, Circuit Judges.

Martha Almendarez-Arujo, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' ("BIA") order denying her motion to remand based on ineffective assistance of counsel. We have jurisdiction pursuant

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

to 8 U.S.C. § 1252. We review for abuse of discretion the denial of a motion to remand, and review de novo questions of law, including claims of due process violations due to ineffective assistance of counsel. *Mohammed v. Gonzales*, 400 F.3d 785, 791-92 (9th Cir. 2005). We deny the petition for review.

The BIA did not abuse its discretion in denying Almendarez-Arujo's motion to remand because Almendarez-Arujo failed to comply with the requirements set forth in *Matter of Lozada*, 19 I. & N. Dec. 637 (BIA 1988), and the ineffective assistance is not plain on the face of the record. *See Reyes v. Ashcroft*, 358 F.3d 592, 597-99 (9th Cir. 2004). It follows that Almendarez-Arujo's due process claim fails. *See Lata v. INS*, 204 F.3d 1241, 1246 (9th Cir. 2000) (requiring error to prevail on a due process claim).

In light of our disposition, we do not reach Almendarez-Arujo's contentions regarding prejudice.

PETITION FOR REVIEW DENIED.