

JAN 19 2010

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>ELSA VILLALOBOS GARCIA,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER Jr., Attorney General,</p> <p>Respondent.</p>
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No. 08-74622

Agency No. A097-361-208

MEMORANDUM\*

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

Submitted January 11, 2010\*\*

Before: BEEZER, TROTT, and BYBEE, Circuit Judges.

Elsa Villalobos Garcia, a native and citizen of Mexico, petitions pro se for review of the Board of Immigration Appeals' order dismissing her appeal from the Immigration judge's decision denying her application for cancellation of removal.

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\* 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).

The BIA determined that petitioner is ineligible for cancellation of removal because she lacks a qualifying relative. *See* 8 U.S.C. § 1229b(b)(1)(d); *Molina-Estrada v. INS*, 293 F.3d 1089, 1093-94 (9th Cir. 2002). Petitioner alleged that the qualifying relative provision of 8 U.S.C. § 1229b(b)(1)(D) violates the Equal Protection Clause because there is no rational basis for distinguishing between aliens who have qualifying relatives and those who do not for purposes of cancellation of removal relief. Petitioner's challenge to the constitutionality of the statute is foreclosed. *See Vasquez-Zavala v. Ashcroft*, 324 F.3d 1105, 1108 (9th Cir. 2003) (holding that placing aliens in removal, rather than deportation, proceedings does not by itself amount to a due process violation); *Hernandez-Mezquita v. Ashcroft*, 293 F.3d 1161, 1163-65 (9th Cir. 2002) (no equal protection violation arising from placing aliens in removal rather than deportation proceedings).

**PETITION FOR REVIEW DENIED.**