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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>JOSE MANUEL GOMEZ-PEREZ,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER Jr., Attorney General,</p> <p>Respondent.</p>
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No. 05-74574

Agency No. A075-580-176

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.

Jose Manuel Gomez-Perez, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals’ order summarily affirming an immigration judge’s (“IJ”) decision finding him removable for participating in

* 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).

alien smuggling. We have jurisdiction under 8 U.S.C. § 1252. We review de novo claims of due process violations, *Vasquez-Zavala v. Ashcroft*, 324 F.3d 1105, 1107 (9th Cir. 2003), and review for substantial evidence the agency's findings of fact, *Urzua Covarrubias v. Gonzales*, 487 F.3d 742, 744 (9th Cir. 2007). We deny the petition for review.

Substantial evidence supports the IJ's finding that Gomez-Perez is removable for alien smuggling where the record contains evidence that Gomez-Perez knew the smugglee was not his niece Maira, yet indicated to the immigration inspector that the smugglee was Maira and the smugglee was a part of his family. *See Altamirano v. Gonzales*, 427 F.3d 586, 592 (9th Cir. 2005).

Gomez-Perez's due process rights were not violated by the admission of the smugglee's Form I-213 (Record of Deportable/Inadmissible Alien) because the form was probative as to the smugglee's alienage, 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). The IJ properly denied Gomez-Perez's request to cross-examine the preparers of the smugglee's

Forms-213 and 831 and his Form I-213, because Gomez-Perez did not produce probative evidence that cast doubt on the documents' reliability. *See id.*

Finally, Gomez-Perez's contention that the IJ violated his duties as a neutral fact finder is not supported by the record.

PETITION FOR REVIEW DENIED.