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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>JOSE ANTONIO RODRIGUEZ,</p> <p style="text-align: center;">Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER Jr., Attorney General,</p> <p style="text-align: center;">Respondent.</p>
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No. 07-70446

Agency No. A097-125-667

MEMORANDUM\*

On Petition for Review of Orders of the  
Board of Immigration Appeals and the former Legalization Appeals Unit

Submitted February 16, 2010\*\*

Before: FERNANDEZ, GOULD, and M. SMITH, Circuit Judges.

Jose Antonio Rodriguez, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals’ order summarily affirming an immigration judge’s decision denying his application for cancellation of removal, and the

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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).

former Legalization Appeals Unit's order dismissing his appeal from the denial of his Special Agricultural Worker ("SAW") application under 8 U.S.C. § 1160. We have jurisdiction to review the denial of a SAW application pursuant to 8 U.S.C. § 1160(e)(3). We review de novo questions of law and claims of constitutional violations in immigration proceedings. *Iturribarria v. INS*, 321 F.3d 889, 894 (9th Cir. 2003). We deny the petition for review.

Rodriguez's due process challenge based on his contention that he never received the Notice of Intent to Deny and Notice of Decision fails because he does not establish prejudice. *See Kohli v. Gonzales*, 473 F.3d 1061, 1067 (9th Cir. 2007) (requiring a showing of prejudice where a procedural defect is alleged); *see also Perez-Martin v. Ashcroft*, 394 F.3d 752, 759-60 (9th Cir. 2005) (to overcome derogatory government evidence, an applicant must provide enough evidence to show qualifying employment "as a matter of just and reasonable inference") (quoting 8 U.S.C. § 1160(b)(3)(B)(iii)).

In his opening brief, Rodriguez fails to address, and therefore has waived any challenge to, the agency's decision denying his application for cancellation of removal. *See Martinez-Serrano v. INS*, 94 F.3d 1256, 1259-60 (9th Cir. 1996).

**PETITION FOR REVIEW DENIED.**