

FEB 26 2010

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

REYNALDO PRECILLA CARADANG,

Petitioner,

v.

ERIC H. HOLDER Jr., Attorney General,

Respondent.

No. 07-72910

Agency No. A044-946-932

MEMORANDUM*

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

Submitted February 16, 2010**

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

Reynaldo Precilla Caradang, a native and citizen of the Philippines, petitions for review the Board of Immigration Appeals' ("BIA") order denying his appeal from an immigration judge's ("IJ") removal order and denying his motion to

* 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).

remand alleging ineffective assistance of counsel. Our jurisdiction is governed by 8 U.S.C. § 1252. We review for abuse of discretion the denial of a motion to remand and de novo questions of law. *Lin v. Ashcroft*, 377 F.3d 1014, 1023-24 (9th Cir. 2004). We deny in part and dismiss in part the petition for review.

The IJ properly determined that Caradang was removable pursuant to 8 U.S.C. § 1227(a)(1)(A), as an inadmissible alien based on willful misrepresentation of a material fact pursuant to 8 U.S.C. § 1182(a)(6)(C)(i).

The BIA did not abuse its discretion in denying the motion to remand because Caradang presented insufficient evidence to establish prejudice. *See Rojas-Garcia v. Ashcroft*, 339 F.3d 814, 826 (9th Cir. 2003) (to prevail on an ineffective assistance of counsel claim a petitioner must demonstrate prejudice); *see also Forbes v. INS*, 48 F.3d 439, 442 (9th Cir. 1995) (knowledge of the falsity of information is sufficient to establish willful misrepresentation of material fact).

We lack jurisdiction to consider the IJ's discretionary denial of Caradang's application for a waiver under 8 U.S.C. § 1227(a)(1)(H). *See San Pedro v. Ashcroft*, 395 F.3d 1156, 1157-58 (9th Cir.2005).

PETITION FOR REVIEW DENIED in part; DISMISSED in part.