

MAR 24 2010

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JORGE AVILA-AYALA,

Petitioner,

v.

ERIC H. HOLDER Jr., Attorney General,

Respondent.

No. 07-74924

Agency No. A092-057-300

MEMORANDUM*

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

Submitted March 16, 2010**

Before: SCHROEDER, PREGERSON, and RAWLINSON, Circuit Judges.

Jorge Avila-Ayala, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' ("BIA") order dismissing his appeal from an immigration judge's removal order. We have jurisdiction pursuant to 8 U.S.C.

* 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).

§ 1252. We review de novo constitutional challenges. *Masnauskas v. Gonzales*, 432 F.3d 1067, 1069 (9th Cir. 2005). We deny the petition for review.

Avila-Ayala's equal protection claim is not colorable because he was ineligible for relief under former Immigration and Nationality Act § 212(c) regardless of when proceedings were initiated against him. *See Alvarez-Barajas v. Gonzales*, 418 F.3d 1050, 1054 (9th Cir. 2005); 8 C.F.R. § 1212.3(h)(2) (section 440(d) of the Antiterrorism and Effective Death Penalty Act of 1996 applies to guilty pleas made between April 24, 1996 and April 1, 1997).

PETITION FOR REVIEW DENIED.