

APR 12 2010

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ANDREAS VASQUEZ-ZARCO,

Petitioner,

v.

ERIC H. HOLDER Jr., Attorney General,

Respondent.

No. 07-73356

Agency No. A077-168-268

MEMORANDUM*

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

Submitted April 5, 2010**

Before: RYMER, McKEOWN, and PAEZ, Circuit Judges.

Andreas Vasquez-Zarco, a native and citizen of Mexico, petitions for review of a Board of Immigration Appeals (“BIA”) order dismissing his appeal from an immigration judge’s decision denying his application for cancellation of removal.

* 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).

We have jurisdiction pursuant to 8 U.S.C. §1252. We review for substantial evidence the BIA's determination of continuous physical presence. *Landin-Zavala v. Gonzales*, 488 F.3d 1150, 1151 (9th Cir. 2007). We review de novo questions of law and due process claims. *Cerezo v. Mukasey*, 512 F.3d 1163, 1166 (9th Cir. 2008). We deny the petition for review.

Substantial evidence supports the BIA's determination that Vasquez-Zarco failed to establish the ten years of continuous physical presence required for cancellation of removal. *See* 8 U.S.C. § 1229b(d)(2) (departure in excess of ninety days breaks continuous physical presence). Vasquez-Zarco fails to point to any authority in support of his theory of constructive presence. *Cf.* 8 U.S.C. § 1229b(1)(A) (Alien must be "physically present in the United States for a continuous period of not less than 10 years immediately preceding the date of such application.")

Vasquez-Zarco's due process claim is not supported by the record.

PETITION FOR REVIEW DENIED.