

APR 12 2010

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MAUDELIO REMIGIO DELEON-  
BARRIOS,

Petitioner,

v.

ERIC H. HOLDER Jr., Attorney General,

Respondent.

No. 07-74844

Agency No. A076-861-637

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.

Maudelio Remigio Deleon-Barrios, a native and citizen of Guatemala,  
petitions for review of the Board of Immigration Appeals' ("BIA") order

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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).

dismissing his appeal from an immigration judge's ("IJ") decision denying his application for cancellation of removal and denying his motion to remand based on ineffective assistance of counsel. We have jurisdiction pursuant to 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 (9th Cir. 2004). We deny the petition for review.

The BIA did not abuse its discretion in denying Deleon-Barrios' motion to remand because he did not demonstrate that his former counsel failed to perform with sufficient competence. *See Mohammed v. Gonzales*, 400 F.3d 785, 793 (9th Cir. 2005); *see also Magallanes-Damian v. INS*, 783 F.2d 931, 934 (9th Cir. 1986) (attorney's decision to forego contesting deportability was a tactical decision that did not rise to the level of ineffective assistance).

Deleon-Barrios has waived any challenge to the BIA's dismissal of his appeal from the IJ's decision denying his cancellation of removal application. *See Martinez-Serrano v. INS*, 94 F.3d 1256, 1259-60 (9th Cir. 1996).

**PETITION FOR REVIEW DENIED.**