

APR 13 2010

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ERIKA CALDERON,

Petitioner,

v.

ERIC H. HOLDER Jr., Attorney General,

Respondent.

No. 07-74696

Agency No. A075-706-612

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.

Erika Calderon, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' order dismissing her appeal from an immigration judge's ("IJ") decision denying her application for asylum, withholding of removal

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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).

and relief under Convention Against Torture. Our jurisdiction is governed by 8 U.S.C. § 1252. We review for substantial evidence findings of fact, *Hoxha v. Ashcroft*, 319 F.3d 1179, 1182, n. 4 (9th Cir. 2003), and de novo claims of due process violations, *Sanchez-Cruz v. INS*, 255 F.3d 775, 779 (9th Cir. 2001). We deny in part and dismiss in part the petition for review.

Because Calderon failed to challenge the agency's denial of asylum, withholding of removal, and CAT relief, these claims are waived. *See Martinez-Serrano v. INS*, 94 F.3d 1256, 1259-60 (9th Cir. 1996) (issues not raised in the opening brief are deemed waived).

We reject Calderon's claim that the IJ violated her due process rights by not considering all of the country condition evidence because she received a full and fair hearing. *See Lata v. INS*, 204 F.3d 1241, 1246 (9th Cir. 2000) (requiring legal error and prejudice to prevail on a due process challenge).

We lack jurisdiction to review Calderon's contention that the IJ violated her due process rights by not forwarding her asylum application to the State Department because she failed to raise this issue before the agency. *See Barron v. Ashcroft*, 358 F.3d 674, 678 (9th Cir. 2004).

**PETITION FOR REVIEW DENIED in part and DISMISSED in part.**