

APR 29 2010

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

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| <p>JUAN FIGUEROA,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, JR., Attorney General,</p> <p>Respondent.</p> |
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No. 04-74050

Agency No. A041-328-097

ORDER

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

Argued and Submitted April 13, 2010
San Francisco, California

Before: KLEINFELD, TASHIMA, and THOMAS, Circuit Judges.

Petitioner seeks review of an order of the Board of Immigration Appeals (“BIA”) affirming an immigration judge’s (“IJ”) denial of relief under former § 212(c) of the Immigration and Nationality Act, 8 U.S.C. § 1182(c) (repealed 1996). The IJ denied § 212(c) relief because petitioner failed to meet the requirement “that the alien warrants relief as a matter of discretion.” We lack jurisdiction, however,

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

because “[d]iscretionary decisions, including whether or not to grant § 212(c) relief, are not reviewable.” *Vargas-Hernandez v. Gonzales*, 497 F.3d 919, 923 (9th Cir. 2007) (citing 8 U.S.C. § 1252(a)(2)(B)(ii)). Petitioner’s attempt to attack the IJ’s adverse credibility finding under the guise of a due process attack also fails. *See Torres-Aguilar v. INS*, 246 F.3d 1267, 1271 (9th Cir. 2001) (“a petitioner may not create the jurisdiction that Congress chose to remove simply by cloaking an abuse of discretion argument in constitutional garb”).

We are also barred from reviewing petitioner’s remaining arguments because petitioner failed to exhaust his administrative remedies with respect to those claims before the BIA. *See Abebe v. Mukasey*, 554 F.3d 1203, 1208 (9th Cir. 2009); *Barron v. Ashcroft*, 358 F.3d 674, 678 (9th Cir. 2004).

For the above stated reasons, this petition for review is **DISMISSED**.