

MAY 12 2010

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

PEDRO DELGADO-SALIZAR, aka  
Salizar Delgado, Pedro Salizar, Pedro  
Delgado-Salazar,

Petitioner,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 07-70677

Agency No. A092-733-221

MEMORANDUM\*

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

Submitted May 7, 2010\*\*  
Pasadena, California

Before: O'SCANNLAIN and TALLMAN, Circuit Judges, and BLOCK, District  
Judge.\*\*\*

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\* This disposition is not appropriate for publication and is not precedent  
except as provided by Ninth Circuit Rule 36-3.

\*\* The panel unanimously concludes this case is suitable for decision  
without oral argument. *See* Fed. R. App. P. 34(a)(2).

\*\*\* The Honorable Frederic Block, Senior United States District Judge for  
the Eastern District of New York, sitting by designation.

Pedro Delgado-Salizar petitions for review of a decision of the Board of Immigration Appeals (“BIA”). As the facts are known to the parties, we repeat them only as necessary to explain our decision.

## I

Delgado-Salizar first contends that the IJ abused his discretion by refusing to grant his motion for a continuance. Delgado-Salizar’s attorney told the IJ that she needed the continuance to file paperwork necessary to Delgado-Salizar’s request for an adjustment of status. The IJ denied the requested continuance, but granted Delgado-Salizar several additional days to file the required form. That same day, IJ denied Delgado-Salizar's adjustment of status request, but explicitly stated that he did not base his denial on Delgado-Salizar’s failure to file the paperwork. Accordingly, Delgado-Salizar has failed to demonstrate that he was prejudiced by the IJ’s decision. *See Colmenar v. INS*, 210 F.3d 967, 971 (9th Cir. 2000).

## II

Delgado-Salizar next contends that the IJ violated his Due Process rights by permitting the government to “cross examine” him before his own attorney conducted a direct examination. After the government completed its examination of Delgado-Salizar, his attorney conducted an examination. Thus, Delgado-Salizar had an adequate opportunity to present evidence on his behalf. His hearing was

fundamentally fair and did not violate his Due Process rights. *See Kaur v. Ashcroft*, 388 F.3d 734, 736-37 (9th Cir. 2004).

### III

Finally, Delgado-Salazar claims that the government violated his Due Process rights by failing to enter into evidence a “rap sheet” that it used during its examination of him. The BIA’s decision that Delgado-Salazar was not entitled to a waiver of removability was not based on the contents of the rap sheet, but rather on his testimony during the government’s examination. Thus, Delgado-Salazar was not deprived of the right to see any evidence used against him, *see* 8 U.S.C. § 1229a(b)(4)(B), nor did the government’s actions fail to follow fundamentally fair procedures, *see Kaur*, 388 F.3d at 737.

### IV

Accordingly, Delgado-Salazar’s petition for review is

**DENIED.**