

MAY 19 2010

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

NAPOLEON BALDEMOR SANTA
MARIA,

Petitioner,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 05-76699

Agency No. A044-949-027

MEMORANDUM*

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

Argued and Submitted April 8, 2010
Pasadena, California

Before: FRIEDMAN,** D.W. NELSON, REINHARDT, Circuit Judges.

Napoleon Baldemor Santa Maria petitions for review of the Board of Immigration Appeals's ("BIA") decision adopting an immigration judge's ("IJ") determination that Santa Maria was not eligible to apply for a discretionary waiver

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

** The Honorable Daniel M. Friedman, United States Circuit Judge for the Federal Circuit, sitting by designation.

of removal under 8 U.S.C. § 1227(a)(1)(H)(i). We have jurisdiction pursuant to 8 U.S.C. § 1252(a).

When the BIA cites *Matter of Burbano*, 20 I. & N. Dec. 872, 874 (BIA 1994), and does not disagree with any part of the IJ's decision, we review the IJ's opinion as if it were that of the BIA. *Samayoa-Martinez v. Holder*, 558 F.3d 897, 899 (9th Cir. 2009). We review questions of law de novo, except to the extent that deference is owed to the BIA's interpretation of its governing statutes and regulations. *See Barrios v. Holder*, 581 F.3d 849, 854 (9th Cir. 2009.).

Section 1227(a)(1)(H)(i) relief is available only to an alien who "is the spouse, parent, son, or daughter of a citizen of the United States." Santa Maria's mother is a deceased United States citizen. We recently held that an individual whose mother is a United States citizen continues to be the son of a citizen of the United States, as that phrase is used in 8 U.S.C. § 1227(a)(1)(H)(i), after his mother's death. *Federiso v. Holder*, No. 08-74792, (9th Cir. May 19, 2010). *Federiso* puts to rest any dispute as to whether Santa Maria is the son of a citizen of the United States per § 1227(a)(1)(H)(i). Santa Maria is therefore eligible to apply for § 1227(a)(1)(H)(i) relief, and the IJ and BIA erred by concluding otherwise.

PETITION GRANTED; REMANDED.