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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

VERONICA MARTINEZ-MARTINEZ,

Petitioner,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 08-70658

Agency No. A099-438-918

MEMORANDUM\*

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

Submitted June 29, 2010\*\*

Before: ALARCÓN, LEAVY, and GRABER, Circuit Judges.

Veronica Martinez-Martinez, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' ("BIA") order denying her motion to remand and dismissing her appeal from an immigration judge's decision denying her application for cancellation of removal. We have jurisdiction under 8 U.S.C.

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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).

§1252. We review for abuse of discretion the denial of a motion to remand, *Reyes v. Ashcroft*, 358 F.3d 592, 595 (9th Cir. 2004), for substantial evidence the agency's determination of continuous physical presence, *Landin-Zavala v. Gonzales*, 488 F.3d 1150, 1151 (9th Cir. 2007), and de novo due process claims, *Ram v. INS*, 243 F.3d 510, 516 (9th Cir. 2001). We deny the petition for review.

The BIA did not abuse its discretion in denying Martinez-Martinez's motion to remand based on ineffective assistance of counsel because she did not establish that prejudice resulted from the alleged ineffective assistance. *See Rojas-Garcia v. Ashcroft*, 339 F.3d 814, 826 (9th Cir. 2003) (to prevail on an ineffective assistance of counsel claim a petitioner must demonstrate prejudice).

Substantial evidence supports the agency's determination that Martinez-Martinez did not meet the continuous physical presence requirement where she repeatedly testified that she entered the United States between May 10, 1996, and May 20, 1996, and Martinez was served with a Notice to Appear on May 2, 2006. *See* 8 U.S.C. § 1229b(b)(1)(A). Martinez-Martinez's due process claim therefore fails. *See Lata v. INS*, 204 F.3d 1241, 1246 (9th Cir. 2000) (requiring error for a petitioner to prevail on a due process claim).

Martinez-Martinez's remaining contentions are unpersuasive.

**PETITION FOR REVIEW DENIED.**

