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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>NORBERTO BALLESTEROS FRIAS,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p>Respondent.</p>
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No. 06-73887

Agency No. A043-807-373

MEMORANDUM*

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

Submitted September 13, 2010**

Before: SILVERMAN, CALLAHAN, and N.R. SMITH, Circuit Judges.

Norberto Ballesteros Frias, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' order summarily affirming an immigration judge's order of removal. We have jurisdiction under 8 U.S.C.

* 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. Reviewing de novo, *Simeonov v. Ashcroft*, 371 F.3d 532, 535 (9th Cir. 2004), we deny the petition for review.

Contrary to his contention, Ballesteros Frias is not eligible to apply for relief under former section 212(c), because he has not been admitted as a legal permanent resident. *See* 8 U.S.C. § 1182(c) (repealed 1996) (providing relief only to “[a]liens lawfully admitted for permanent residence”); 8 C.F.R. § 1212.3(f)(1) (“An application for relief under former section 212(c) of the Act shall be denied if: (1) The alien has not been lawfully admitted for permanent residence.”).

Ballesteros Frias’ contention that he received insufficient notice regarding exclusion proceedings fails because he was placed in removal, not exclusion, proceedings. He fails to establish any prejudice from his treatment as an arriving alien. *See Simeonov*, 371 F.3d at 538 (requiring prejudice to prevail on a due process challenge).

PETITION FOR REVIEW DENIED.