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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>JUAN BRISENO-GUTIERREZ,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p>Respondent.</p>
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No. 06-73918

Agency No. A038-514-108

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.

Juan Briseno-Gutierrez, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' order dismissing his appeal from an immigration judge's removal order. We have jurisdiction under 8 U.S.C. § 1252. We review for substantial evidence whether a conviction was established by clear

* 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).

and convincing evidence, *Nakamoto v. Ashcroft*, 363 F.3d 874, 881-82 (9th Cir. 2004), and review de novo questions of law and constitutional claims, *Khan v. Holder*, 584 F.3d 773, 776 (9th Cir. 2009). We deny the petition for review.

The agency concluded that Briseno-Gutierrez is removable under 8 U.S.C. § 1227(a)(2)(A)(iii) based on his 1992 conviction for lewd or lascivious acts with a child in violation of California Penal Code § 288(c).

Briseno-Gutierrez's contention that the record of conviction is inconsistent and ambiguous is not supported by the record. Substantial evidence supports the finding that the government established the existence of his conviction by clear and convincing evidence. *See* 8 U.S.C. § 1229a(c)(3)(A)-(B).

Briseno-Gutierrez is ineligible for relief under former section 212(c), 8 U.S.C. § 1182(c) (repealed 1996), because his ground of removability lacks a statutory counterpart in a ground of inadmissibility. *See* 8 C.F.R. § 1212.3(f)(5); *see also Abebe v. Mukasey*, 554 F.3d 1203, 1207, 1208 n.7 (9th Cir. 2009) (en banc).

Briseno-Gutierrez's retroactivity and equal protection challenges to the agency's denial of section 212(c) relief are foreclosed by *Abebe*, 554 F.3d at 1207, 1208 n.7.

PETITION FOR REVIEW DENIED.