

SEP 27 2010

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>CUAUHTEMOC BALTAZAR-OROZCO,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p>Respondent.</p>
--

No. 08-73200

Agency No. A075-664-548

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.

Cuauhtemoc Baltazar-Orozco, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals’ (“BIA”) order dismissing his appeal from an immigration judge’s decision denying his application for cancellation of removal. Our jurisdiction is governed by 8 U.S.C. § 1252. We review de novo

* 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).

questions of law, *Altamirano v. Gonzales*, 427 F.3d 586, 591 (9th Cir. 2005), and claims of constitutional violations in immigration proceedings, *Iturribarria v. INS*, 321 F.3d 889, 894 (9th Cir. 2003). We deny in part and dismiss in part the petition for review.

The agency properly concluded that Baltazar-Orozco was the subject of an expedited removal order that interrupted his continuous physical presence. *See Juarez-Ramos v. Gonzales*, 485 F.3d 509, 512 (9th Cir. 2007) (an expedited removal order interrupts an alien's continuous physical presence for cancellation purposes). Baltazar-Orozco's due process claim fails because he cannot demonstrate prejudice. *See Lata v. INS*, 204 F.3d 1241, 1244 (9th Cir. 2000) (requiring prejudice for a petitioner to prevail on a due process claim).

We lack jurisdiction over Baltazar-Orozco's contention that the expedited removal order in the record did not pertain to him, because he failed to exhaust this contention before the BIA. *See Barron v. Ashcroft*, 358 F.3d 674, 678 (9th Cir. 2004).

PETITION FOR REVIEW DENIED in part; DISMISSED in part.