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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

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| <p>LUIS MALDONADO-HERNANDEZ,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p>Respondent.</p> |
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No. 08-72394

Agency No. A028-496-894

MEMORANDUM*

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

Submitted December 14, 2010**

Before: GOODWIN, WALLACE, and THOMAS, Circuit Judges.

Luis Maldonado-Hernandez, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals’ (“BIA”) order sustaining the government’s appeal from an immigration judge’s (“IJ”) decision granting his application for cancellation of removal. Our jurisdiction is governed by 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. We review de novo claims of constitutional violations in immigration proceedings, *Iturribarria v. INS*, 321 F.3d 889, 894 (9th Cir. 2003), and we dismiss in part and deny in part the petition for review.

We lack jurisdiction to review the BIA's discretionary determination that Maldonado-Hernandez failed to show exceptional and extremely unusual hardship to a qualifying relative. *See Martinez-Rosas v. Gonzales*, 424 F.3d 926, 930 (9th Cir. 2005).

Contrary to Maldonado-Hernandez's contention, the BIA did not violate due process by reviewing de novo the IJ's hardship determination. *See* 8 C.F.R. § 1003.1(d)(3)(ii).

Maldonado-Hernandez's contention that the BIA failed to consider his psychological report fails because he has not overcome the presumption that the BIA reviewed the record. *See Larita-Martinez v. INS*, 220 F.3d 1092, 1095-96 (9th Cir. 2000).

Maldonado-Hernandez's remaining contentions are unavailing.

PETITION FOR REVIEW DISMISSED in part, DENIED in part.