

MAR 02 2011

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>REMBERTO NOE CHINCHILLA,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p>Respondent.</p>

No. 09-70458

Agency No. A072-401-432

MEMORANDUM*

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

Submitted February 15, 2011**

Before: CANBY, FERNANDEZ, and M. SMITH, Circuit Judges.

Remberto Noe Chinchilla, a native and citizen of Guatemala, petitions for review of the Board of Immigration Appeals’ (“BIA”) order dismissing his appeal from an immigration judge’s (“IJ”) removal order. We have jurisdiction under 8 U.S.C. § 1252. We review for substantial evidence the agency’s factual findings,

* 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).

Covarrubias v. Gonzales, 487 F.3d 742, 747 (9th Cir. 2007), and we deny the petition for review.

Substantial evidence supports the agency's determination that Chinchilla provided false testimony to an immigration officer for the purpose of obtaining an immigration benefit and therefore is statutorily barred from demonstrating good moral character under 8 U.S.C. § 1101(f)(6). *See Ramos v. INS*, 246 F.3d 1264, 1266 (9th Cir. 2001); *see also Valadez-Munoz v. Holder*, 623 F.3d 1304, 1309 (9th Cir. 2010) (doctrine of timely recantation is available to individuals who have a "momentary lapse"). Accordingly, he is ineligible for special rule cancellation of removal under the Nicaraguan Adjustment and Central American Relief Act of 1997. *See* 8 C.F.R. § 1240.66(b)(3).

Because Chinchilla is statutorily barred from demonstrating good moral character he is also ineligible for voluntary departure at the conclusion of proceedings, *see* 8 U.S.C. § 1229c(b)(1)(B), and we therefore decline to remand for the BIA to consider his contention that the IJ erred in denying his application for voluntary departure.

PETITION FOR REVIEW DENIED.