

APR 15 2011

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>CLEMENTE MARTINEZ HERNANDEZ,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p>Respondent.</p>

No. 10-70479

Agency No. A088-457-560

MEMORANDUM*

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

Submitted April 5, 2011**

Before: B. FLETCHER, CLIFTON, and BEA, Circuit Judges.

Clemente Martinez Hernandez, a native and citizen of Mexico, petitions pro se for review of the Board of Immigration Appeals’ order dismissing his appeal from an immigration judge’s (“IJ”) removal order. We have jurisdiction under 8 U.S.C. § 1252. We review de novo constitutional claims and questions of law,

* 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 review for substantial evidence the agency's factual findings. *Khan v. Holder*, 584 F.3d 773, 776 (9th Cir. 2009). We deny the petition for review.

Substantial evidence supports the agency's determination that Martinez Hernandez was convicted on March 23, 1999, of possession of cocaine in violation of California Health & Safety Code § 11350(a). Accordingly, Martinez Hernandez is ineligible for cancellation of removal. *See* 8 U.S.C. § 1229b(b)(1)(C).

Martinez Hernandez's contention that the IJ violated his right to due process by exhibiting bias and by not affording him an opportunity to present evidence in his favor is not supported by the record. *Cf. Colmenar v. INS*, 210 F.3d 967, 971 (9th Cir. 2000).

Insofar as Martinez Hernandez contends that the IJ erred by relying on an inconclusive record, his contention is unavailing as Martinez Hernandez bore the burden of proof to show eligibility for cancellation of removal. *See* 8 C.F.R. § 1240.8(d) (where evidence indicates that one of the mandatory grounds for denial of an application for relief may apply, alien bears burden to show eligibility for the requested relief).

PETITION FOR REVIEW DENIED.