

JUN 09 2011

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

|  |
|--|
| <p>JOSE ALBERTO MARCIAL,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p>Respondent.</p> |
|--|

No. 09-74093

Agency No. A089-268-234

MEMORANDUM\*

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

Submitted May 24, 2011\*\*

Before: PREGERSON, THOMAS, and PAEZ, Circuit Judges.

Jose Alberto Marcial, 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 (“IJ”) decision denying his application for adjustment of status. We review de novo claims of due process violations in removal

---

\* 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).

proceedings. *Colmenar v. INS*, 210 F.3d 967, 971 (9th Cir. 2000). We deny the petition for review.

Marcial's due process claims fail because the proceedings were not so fundamentally unfair that he was prevented from reasonably presenting his case in support of his adjustment of status application, and he failed to demonstrate prejudice where the BIA, in its de novo review, concluded that Marcial's positive factors do not outweigh his criminal record. *See id.* at 971-72; *see also Hosseini v. Gonzales*, 471 F.3d 953, 957 (9th Cir. 2006)(where the BIA conducts its own review of the evidence and law rather than simply adopting the IJ's decision, our review "is limited to the BIA's decision, except to the extent the IJ's opinion is expressly adopted.").

**PETITION FOR REVIEW DENIED.**