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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>MARCO TULIO WONG,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p>Respondent.</p>
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No. 08-71145

Agency No. A074-439-089

MEMORANDUM*

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

Submitted June 15, 2011**

Before: CANBY, O’SCANNLAIN, and FISHER, Circuit Judges.

Marco Tulio Wong, 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”) decision denying his application for cancellation of removal and voluntary departure. Our jurisdiction is governed by 8 U.S.C. § 1252.

* 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).

We review de novo due process claims, *Vasquez-Zavala v. Ashcroft*, 324 F.3d 1105, 1107 (9th Cir. 2003), and we deny in part and dismiss in part the petition for review.

We reject Wong's contention that the IJ violated due process by not questioning him directly regarding whether he wished to withdraw his asylum application because the IJ properly relied on the statement by Wong's attorney that Wong was withdrawing the application. *See Lata v. INS*, 204 F.3d 1241, 1246 (9th Cir. 2000) (petitioner must show error and prejudice to establish a due process violation); 8 C.F.R. § 1292.4(a).

We decline to reach Wong's contention that the IJ failed to allow him to renew his application because he did not raise this argument before the BIA. *See Barron v. Ashcroft*, 358 F.3d 674, 678 (9th Cir. 2004). We lack jurisdiction over Wong's unexhausted claim that his attorney was incompetent. *See id.*

PETITION FOR REVIEW DENIED in part; DISMISSED in part.