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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>BENIGNO LACAP VIRAY,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p>Respondent.</p>

No. 07-74970

Agency No. A034-724-644

MEMORANDUM*

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

Submitted July 12, 2011**

Before: SCHROEDER, ALARCÓN, and LEAVY, Circuit Judges.

Benigno Lacap Viray, a native and citizen of the Philippines, petitions for review of the Board of Immigration Appeals’ order dismissing his appeal from an immigration judge’s removal order. We have jurisdiction under 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 questions of law, *Cerezo v. Mukasey*, 512 F.3d 1163, 1166 (9th Cir. 2008), and we deny the petition for review.

The agency properly concluded that Viray was an alien seeking admission where he had not been “lawfully admitted for permanent residence.” *See* 8 U.S.C. § 1101(a)(13)(C); *Segura v. Holder*, 605 F.3d 1063, 1067 (9th Cir. 2010) (an alien erroneously admitted for permanent residence has not been “lawfully admitted for permanent residence”); *see also Kyong Ho Shin v. Holder*, 607 F.3d 1213, 1217-18 (9th Cir. 2010) (“[T]he issue of whether [a lawful permanent resident] retains her status until the conclusion of removal proceedings is distinct from whether she was ‘lawfully admitted’ in the first place . . .”).

PETITION FOR REVIEW DENIED.