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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

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

No. 08-70436

Agency No. A078-463-557

MEMORANDUM*

On Remand From The United States Supreme Court

Before: TALLMAN, CLIFTON, and CALLAHAN, Circuit Judges.**

Carlos Martinez Gutierrez petitions for review of the Board of Immigration Appeals' ("BIA") order upholding an immigration judge's denial of cancellation of removal under 8 U.S.C. § 1229b(a). In our original decision, we relied on *Mercado-Zazueta v. Holder*, 580 F.3d 1102 (9th Cir. 2009), to hold that Martinez Gutierrez could impute his father's legal status to himself to meet the five-year

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** Following the death of Judge Beezer, Judge Clifton was drawn to replace Judge Beezer on the panel.

lawful permanent residence requirement under 8 U.S.C. § 1229b(a)(1). We therefore granted the petition for review. *Martinez Gutierrez v. Holder*, 411 F. App'x 121 (9th Cir. 2011) (unpublished). The Supreme Court granted certiorari, *Holder v. Martinez Gutierrez*, 132 S. Ct. 71 (2011), and reversed our decision, *Holder v. Martinez Gutierrez*, 132 S. Ct. 2011 (2012).

Because *Mercado-Zazueta* is no longer valid precedent on the issue of imputation under 8 U.S.C. § 1229b, *see Sawyers v. Holder*, — F.3d —, 2012 WL 2507513 (9th Cir. June 29, 2012) (per curiam), we now reject Martinez Gutierrez's imputation argument concerning his father's lawful permanent residence.

As the parties do not dispute that Martinez Gutierrez, on his own, lacks the requisite lawful permanent residence, we uphold the BIA's decision to deny cancellation of removal.

PETITION FOR REVIEW DENIED.