

SEP 18 2012

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>PATRICK LEVILAIN,</p> <p style="text-align: center;">Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p style="text-align: center;">Respondent.</p>
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No. 10-73115

Agency No. A014-520-652

MEMORANDUM*

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

Submitted September 10, 2012**

Before: WARDLAW, CLIFTON, and N.R. SMITH, Circuit Judges.

Patrick Levilain, a native and citizen of Canada, petitions pro se for review of the Board of Immigration Appeals’ (“BIA”) order denying his motion to remand and dismissing his appeal from an immigration judge’s removal order. We have jurisdiction under 8 U.S.C. § 1252. We review for abuse of discretion the denial of

* 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).

a motion to remand, *Movsisian v. Ashcroft*, 395 F.3d 1095, 1098 (9th Cir. 2005), and review de novo questions of law, *Mohammed v. Gonzales*, 400 F.3d 785, 791-92 (9th Cir. 2005). We deny the petition for review.

The BIA did not abuse its discretion by denying Levilain's motion to reopen based on ineffective assistance of counsel for failure to establish prejudice where Levilain's aggravated felony conviction renders him statutorily ineligible for cancellation of removal. *See* 8 U.S.C. § 1229b(a)(3); *Mohammed*, 400 F.3d at 793-94 (to prevail on an ineffective assistance of counsel claim, petitioner must show that counsel's actions may have affected the outcome of the proceedings).

Levilain's claim to derivative United States citizenship fails because the record evidence belies any such claim.

PETITION FOR REVIEW DENIED.