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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>SALVADOR BENITEZ-PINEDA,</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>

No. 11-70208

Agency No. A088-734-262

MEMORANDUM*

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

Submitted November 13, 2012**

Before: CANBY, TROTT, and W. FLETCHER, Circuit Judges.

Salvador Benitez-Pineda, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' order dismissing his appeal from an immigration judge's decision denying his application for cancellation of removal.

We have jurisdiction under 8 U.S.C. § 1252. We review for substantial evidence

* 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).

the agency's factual findings, *Aguilar Gonzalez v. Mukasey*, 534 F.3d 1204, 1208 (9th Cir. 2008), and we deny the petition for review.

Substantial evidence supports the agency's determination that Benitez-Pineda's testimony concerning his trip to Canada was not credible because it was implausible and contradicted by the totality of the circumstances. *See Malkandi v. Holder*, 576 F.3d 906, 917 (9th Cir. 2009) (an adverse credibility determination should be based on the totality of the circumstances, including the inherent plausibility of the petitioner's testimony).

Substantial evidence also supports the agency's determination that Benitez-Pineda was statutorily barred from establishing good moral character in order to qualify for cancellation of removal because he engaged in affirmative acts in support of a smuggling attempt. *See* 8 U.S.C. §§ 1101(f)(3), 1229b(b)(1)(B); *Urzua Covarrubias v. Gonzales*, 487 F.3d 742, 747-49 (9th Cir. 2007) (alien smuggling finding was supported by substantial evidence where the record reflected that the petitioner provided "an affirmative act of help, assistance, or encouragement").

In light of our disposition, we need not address Benitez-Pineda's remaining contentions.

PETITION FOR REVIEW DENIED.