

NOV 20 2012

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>NORBERTO GARCIA,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p>Respondent.</p>

No. 10-72339

Agency No. A095-188-220

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.

Norberto Garcia, a native and citizen of Mexico, petitions for review of an order of the Board of Immigration Appeals (“BIA”) dismissing his appeal from a decision of an immigration judge (“IJ”) denying his application for cancellation of removal. We have jurisdiction under 8 U.S.C. § 1252. Reviewing de novo due

* 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).

process claims, *Larita-Martinez v. INS*, 220 F.3d 1092, 1095 (9th Cir. 2000), we deny the petition for review.

The BIA did not violate Garcia's right to due process by failing to consider a diagnostic letter. *See id.* at 1095-96 (“[A]n alien attempting to establish that the B[IA] violated his right to due process by failing to consider relevant evidence must overcome the presumption that it did review the evidence”).

The agency also did not violate Garcia's right to due process when it declined to issue a subpoena to compel the author of the diagnostic letter to testify. *See* 8 C.F.R. § 1003.31(c) (empowering the IJ with authority to set and extend time limits for the filing of documents and requiring the IJ to deem waived any document not filed within the time set).

In light of this disposition, we need not address Garcia's remaining contentions. *See Mendez-Alcaraz v. Gonzales*, 464 F.3d 842, 844 (9th Cir. 2006) (declining to reach nondispositive challenges to a BIA order).

PETITION FOR REVIEW DENIED.