

DEC 21 2012

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

GILBERTO ACOSTA-OLIVARRIA,

Petitioner,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 10-70902

Agency No. A079-657-188

MEMORANDUM*

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

Submitted December 19, 2012**

Before: GOODWIN, WALLACE, and FISHER, Circuit Judges.

Gilberto Acosta-Olivarria, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals’ (“BIA”) order dismissing his appeal from an immigration judge’s removal order. We have jurisdiction under 8 U.S.C. § 1252. We review de novo claims of constitutional violations and questions 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).

law, *Khan v. Holder*, 584 F.3d 773, 776 (9th Cir. 2009), and we deny the petition for review.

The BIA correctly concluded that Acosta-Olivarria is ineligible to adjust status because he is inadmissible under 8 U.S.C. § 1182(a)(9)(C)(i)(I) for having accrued more than one year of unlawful presence in the United States and then reentering without admission. *See Garfias-Rodriguez v. Holder*, No. 09-72603, 2012 WL 5077137, at *7 (9th Cir. Oct. 19, 2012) (en banc) (aliens who are inadmissible under 8 U.S.C. § 1182(a)(9)(C)(i)(I) are not eligible for adjustment of status under 8 U.S.C. § 1255(i)).

Acosta-Olivarria's due process contentions therefore fail. *See Lata v. INS*, 204 F.3d 1241, 1246 (9th Cir. 2000) (an alien must show error and prejudice to prevail on a due process claim).

PETITION FOR REVIEW DENIED.