

FEB 13 2013

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>VICENTE DAMIAN-RODRIGUEZ,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p>Respondent.</p>
--

No. 12-70897

Agency No. A088-360-177

MEMORANDUM*

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

Submitted February 11, 2013**

Before: FERNANDEZ, TASHIMA, and WARDLAW, Circuit Judges.

Vicente Damian-Rodriguez, 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 (“IJ”) decision denying his application for cancellation of removal. We have jurisdiction under 8 U.S.C. § 1252. We review

* 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).

de novo claims of due process violations, *Colmenar v. INS*, 210 F.3d 967, 971 (9th Cir. 2000), and we deny the petition for review.

The BIA properly determined that the IJ did not violate Damian-Rodriguez's due process rights by excluding an untimely submitted therapist's report from the evidentiary record, where Damian-Rodriguez failed to demonstrate that the report may have affected the outcome of the proceedings. *See id.* (requiring prejudice to prevail on a due process challenge).

Damian-Rodriguez failed to raise in his opening brief, and therefore waived, any challenges to the BIA's determination that his video-conference hearing did not violate his due process rights, and to the agency's hardship determination. *See Rizk v. Holder*, 629 F.3d 1083, 1091 n.3 (9th Cir. 2011) (issues not raised in the opening brief may be deemed waived).

Damian-Rodriguez's remaining contentions are unavailing.

PETITION FOR REVIEW DENIED.

