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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

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

No. 12-71190

Agency No. A079-539-716

MEMORANDUM*

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

Submitted August 14, 2013**

Before: SCHROEDER, GRABER, and PAEZ, Circuit Judges.

Rosalba Aquino-Garcia, a native and citizen of Mexico, petitions pro se for review of the Board of Immigration Appeals’ (“BIA”) order denying her motion to reopen removal proceedings. Our jurisdiction is governed by 8 U.S.C. § 1252. We review de novo claims of due process violations. *Fernandez v. Gonzales*, 439 F.3d

* 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).

592, 603 (9th Cir. 2006). We dismiss in part and deny in part the petition for review.

We lack jurisdiction to review the BIA's determination that the evidence Aquino-Garcia submitted with her motion to reopen was insufficient to warrant reopening and she did not establish prima facie eligibility for relief, where the evidence presented concerns the same grounds involved in the original discretionary decision. *See id.* at 600-01.

Aquino-Garcia's due process claim fails because the record shows the BIA considered the hardship to her son and she cannot establish prejudice. *See Lata v. INS*, 204 F.3d 1241, 1246 (9th Cir. 2000) (requiring error and prejudice to prevail on a due process claim).

PETITION FOR REVIEW DISMISSED in part; DENIED in part.