

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

MAY 21 2018

FOR THE NINTH CIRCUIT

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

JULIAN IVAN MONTES-VARELA, AKA
Julian Montes, AKA Julian Ivan Montes,

Petitioner,

v.

JEFFERSON B. SESSIONS III, Attorney
General,

Respondent.

No. 16-70125

Agency No. A076-256-520

MEMORANDUM*

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

Submitted May 15, 2018**

Before: SILVERMAN, BEA, and WATFORD, Circuit Judges.

Julian Ivan Montes-Varela, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' ("BIA") order denying his motion to remand removal proceedings. We have jurisdiction under 8 U.S.C. § 1252. We

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

review for abuse of discretion the BIA's denial of a motion to remand. *Romero-Ruiz v. Mukasey*, 538 F.3d 1057, 1062 (9th Cir. 2008). We deny the petition for review.

The BIA did not abuse its discretion in denying Montes-Varela's motion to remand for failure to show prejudice from any ineffective assistance of counsel, where he failed to show he had a visa immediately available for adjustment of status. *See Mohammed v. Gonzales*, 400 F.3d 785, 793-94 (9th Cir. 2005) (to demonstrate ineffective assistance of counsel, petitioner must show he was prejudiced by counsel's performance; prejudice results when counsel's performance may have affected the outcome of proceedings); 8 U.S.C. § 1255(a)(3) (alien must have a visa immediately available to adjust status). In light of this dispositive determination, we do not reach Montes-Varela's remaining contentions. *See Simeonov v. Ashcroft*, 371 F.3d 532, 538 (9th Cir. 2004) (courts are not required to decide issues unnecessary to the results they reach).

PETITION FOR REVIEW DENIED.