

NOT FOR PUBLICATION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

GILMA BEATRIZ RUIZ HERNANDEZ,

No. 16-70197

Petitioner,

Agency No. A094-201-871

v.

MEMORANDUM*

JEFFERSON B. SESSIONS III, Attorney
General,

Respondent.

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

Submitted May 15, 2018**

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

Gilma Beatriz Ruiz Hernandez, a native and citizen of El Salvador, petitions for review of the Board of Immigration Appeals' order dismissing her appeal from an immigration judge's removal order denying a continuance. We have jurisdiction under 8 U.S.C. § 1252. We review for abuse of discretion the agency's denial of a

* 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).

continuance. *Ahmed v. Holder*, 569 F.3d 1009, 1012 (9th Cir. 2009). We review de novo questions of law and constitutional claims. *Mohammed v. Gonzales*, 400 F.3d 785, 791-92 (9th Cir. 2005). We deny the petition for review.

The agency did not abuse its discretion in denying for lack of good cause Ruiz Hernandez's motion for a sixth continuance to await copies of her parents' alien files from the Department of Homeland Security and adjudication of her visa petition by U.S. Citizenship and Immigration Services, where Ruiz Hernandez failed to explain the importance of her parents' alien files to her own case, and where she required a waiver to re-adjust her status, and the agency concluded she would not warrant a favorable exercise of discretion regarding the waiver. *See* 8 C.F.R. § 1003.29; *Ahmed*, 569 F.3d at 1012 (outlining factors for the reviewing court to consider when reviewing the agency's denial of a continuance, including the importance of the evidence); *Carrillo-Gonzalez v. INS*, 353 F.3d 1077, 1079 (9th Cir. 2003) (argument of counsel does not constitute evidence); *Malilia v. Holder*, 632 F.3d 598, 606 (9th Cir. 2011) (listing factors the agency should consider in determining whether to continue proceedings for adjudication of a pending visa petition).

To the extent Ruiz Hernandez contends the agency erred or violated due process by not holding a hearing to determine her eligibility for a waiver under

8 U.S.C. § 1182(h), or otherwise addressing her contention that she is statutorily eligible, this contention fails where the agency's discretionary determination was dispositive. *See Simeonov v. Ashcroft*, 371 F.3d 532, 538 (9th Cir. 2004) (courts and agencies are not required to reach non-dispositive issues); *Padilla-Martinez v. Holder*, 770 F.3d 825, 830 (9th Cir. 2014) ("To prevail on a due-process claim, a petitioner must demonstrate both a violation of rights and prejudice.")

PETITION FOR REVIEW DENIED.