

OCT 25 2010

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>OSCAR CHAVEZ-ELIZONDO,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p>Respondent.</p>

No. 08-72845

Agency No. A079-155-175

MEMORANDUM*

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

Submitted October 19, 2010**

Before: O’SANNLAIN, TALLMAN, and BEA, Circuit Judges.

Oscar Chavez-Elizondo, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals’ 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 for substantial

* 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).

evidence the agency's continuous physical presence determination, *Gutierrez v. Mukasey*, 521 F.3d 1114, 1116 (9th Cir. 2008), and we deny the petition for review.

Substantial evidence supports the agency's determination that Chavez-Elizondo did not meet the continuous physical presence requirement where he testified that he accepted voluntary departure instead of appearing before an IJ during the relevant statutory time period. *See id.* at 1117-18 (petitioner's testimony that he had the opportunity to go before an IJ and chose to depart instead is sufficient to establish presence-breaking voluntary departure).

Chavez-Elizondo's remaining contentions are unavailing.

PETITION FOR REVIEW DENIED.