

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

February 3, 2010

Charles R. Fulbruge III
Clerk

No. 09-60341

Summary Calendar

SALVADOR CABALLERO-HERNANDEZ,

Petitioner

v.

ERIC H. HOLDER, JR., U. S. ATTORNEY GENERAL,

Respondent

Petition for Review of an Order of the
Board of Immigration Appeals
BIA No. A094-953-167

Before JONES, Chief Judge, and DAVIS and WIENER, Circuit Judges.

PER CURIAM:^{*}

Salvador Cabellero-Hernandez petitions this court for review of the Board of Immigration Appeals' decision summarily affirming the Immigration Judge's ("IJ") order denying his application for cancellation of removal pursuant to 8 U.S.C. § 1229b(b)(1). Petitioner contests the merits of the IJ's determination that he was statutorily ineligible for cancellation of removal because he failed to

^{*} Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

No. 09-60341

demonstrate the requisite hardship. Further, Petitioner challenges the constitutional basis of 8 U.S.C. §§ 1229b(b) and 1252(a)(2)(B).

“This court lacks jurisdiction to review the IJ’s [discretionary] hardship determination” under 8 U.S.C. § 1229b(b)(1). *Rueda v. Ashcroft*, 380 F.3d 831, 831 (2004). Petitioner’s remaining constitutional claims are meritless. Petitioner raises a due process challenge to 8 U.S.C. § 1229b(b)(2) on behalf of his American children, but “[l]egal orders of deportation to their parents do not violate any constitutional right of citizen children” *Gonzalez-Cuevas v. INS*, 515 F.2d 1222, 1224 (5th Cir. 1975). Petitioner next claims that § 1252(a)(2)(B) violates the Administrative Procedure Act (“APA”), but “the APA does not apply to deportation hearings under [the Immigration and Nationality Act].” *Rivera-Cruz v. INS*, 948 F.2d 962, 967 n.5 (5th Cir. 1992).

For these reasons, petition for review is DENIED.