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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

EDUARDO MARTINEZ-HERRERA,

Petitioner,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 07-72358

Agency No. A029-192-223

MEMORANDUM*

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

Argued and Submitted November 2, 2010
San Francisco, California

Before: PAEZ and BEA, Circuit Judges, and DUFFY, Senior District Judge.**

Petitioner Eduardo Martinez-Herrera (“Petitioner”), a native and citizen of Guatemala who entered the United States without inspection in 1988, seeks review of the Board of Immigration Appeals’ (“BIA”) order denying Petitioner a waiver of

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The Honorable Kevin Thomas Duffy, United States District Judge for the Southern District of New York, sitting by designation.

inadmissibility under 8 U.S.C. § 1182(h). Our jurisdiction is governed by 8 U.S.C. § 1252. We deny the petition.

We lack jurisdiction to review denial of Petitioner's request for a waiver of inadmissibility under § 1182(h). Petitioner does not raise a cognizable legal or constitutional question as to the BIA's denial of his waiver request. The BIA determined that Petitioner was statutorily eligible for § 1182(h) relief, but did not, in exercise of its discretion, grant § 1182(h) relief.

There is no merit to Petitioner's contention that a finding of eligibility requires granting a waiver. § 1182(h) expressly states that the "Attorney General may, in his discretion," grant a waiver to an eligible petitioner. Here, the BIA properly considered Petitioner's lack of rehabilitation as one of many factors in determining that relief was not warranted. Because whether to grant § 1182(h) relief is a discretionary decision, we lack jurisdiction to review the agency's decision. *See* 8 U.S.C. § 1252(a)(2)(B)(i); *Mejia v. Gonzales*, 499 F.3d 991, 999 (9th Cir. 2007).

PETITION FOR REVIEW DENIED.