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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

LUIS A. HERNANDEZ BARRON, Petitioner, v. ERIC H. HOLDER, Jr., Attorney General, Respondent.	No. 08-70387 Agency No. A075-178-354 MEMORANDUM[*]

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

Submitted January 10, 2011[**]

Before: BEEZER, TALLMAN, and CALLAHAN, Circuit Judges.

Luis A. Hernandez Barron, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' ("BIA") order dismissing his appeal from an immigration judge's decision finding him removable for participating in alien smuggling and denying his application for cancellation of removal. Our

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[*] 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).

jurisdiction is governed by 8 U.S.C. § 1252. We review for substantial evidence the agency's findings of fact, *Nakamoto v. Ashcroft*, 363 F.3d 874, 881-82 (9th Cir. 2004), and de novo questions of law, *Mercado-Zazueta v. Holder*, 580 F.3d 1102, 1104 (9th Cir. 2009). We deny in part and dismiss in part the petition for review.

Substantial evidence supports the agency's determination that Hernandez Barron was removable due to alien smuggling. *See* 8 U.S.C. § 1182(a)(6)(E)(i); *Urzua-Covarrubias v. Gonzales*, 487 F.3d 742, 748-49 (9th Cir. 2007).

The BIA properly concluded that Hernandez Barron was ineligible for cancellation of removal because he lacked seven years of continuous residence in the United States after being "admitted in any status." *See* 8 U.S.C. § 1229b(a)(2); *id.* § 1101(a)(13)(B) ("An alien who is paroled . . . shall not be considered to have been admitted."). Hernandez Barron points to no authority to support his contention that his wife's admission as a lawful permanent resident may be imputed to him. *Cf. Cuevas-Gaspar v. Gonzales*, 430 F.3d 1013, 1029 (9th Cir. 2005) (a parent's admission for permanent resident status may be imputed to the parent's minor child to satisfy the seven-year continuous residence requirement).

We lack jurisdiction to consider Hernandez Barron's contentions regarding a justification defense to the smuggling charge, and admission based on the filing of

an application for adjustment of status, because he failed to exhaust these claims before the BIA. *See Barron v. Ashcroft*, 358 F.3d 674, 677-78 (9th Cir. 2004).

PETITION FOR REVIEW DENIED in part; DISMISSED in part.