

APR 24 2013

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FRANCISCO OCAMPO CASTRO,

Petitioner,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 10-72328

Agency No. A087-051-068

MEMORANDUM*

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

Submitted April 19, 2013**
San Francisco, California

Before: NOONAN, O'SCANNLAIN, and N.R. SMITH, Circuit Judges.

Francisco Ocampo Castro petitions for review of the decision of the
Department of Homeland Security (DHS) reinstating his 1997 order of deportation.

* 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).

We have jurisdiction pursuant to 8 U.S.C. § 1252, and we deny Castro's petition for review.

Castro does not allege any gross miscarriage of justice in the 1997 removal proceedings. Nor does Castro dispute that his reinstated removal meets all of the elements of 8 U.S.C. § 1231(a)(5). Thus, Castro has failed to present any justiciable issue on appeal. *See Garcia de Rincon v. Dep't of Homeland Sec.*, 539 F.3d 1133, 1137-38 (9th Cir. 2008).

Castro's due process rights were also not violated when DHS reinstated his removal. Castro does not have a protected liberty interest in having his adjustment of status application adjudicated. *See* 8 U.S.C. § 1231(a)(5) ("the alien is not eligible and may not apply for *any relief*" (emphasis added)). Even if Castro did have a due process right, he has failed to show error and substantial prejudice. *See Lata v. INS*, 204 F.3d 1241, 1246 (9th Cir. 2000). The United States Citizenship and Immigration Service did not err in denying Castro's Form I-212 waiver when it determined that Castro did not meet the statutory requirements for consent to reapply under section 212(a)(9)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A).

PETITION FOR REVIEW DENIED.

