

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

MAR 18 2019

FOR THE NINTH CIRCUIT

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

JOSE DANIEL PEREZ-FARIAS, AKA
Jose Perez,

Petitioner,

v.

WILLIAM P. BARR, Attorney General,

Respondent.

No. 17-70696

Agency No. A204-895-702

MEMORANDUM*

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

Submitted March 12, 2019**

Before: LEAVY, BEA, and N.R. SMITH, Circuit Judges.

Jose Daniel Perez-Farias, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeal's order dismissing his appeal from an immigration judge's ("IJ") decision denying his requests for recusal, administrative closure, and a continuance. We have jurisdiction under 8 U.S.C. § 1252. We

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

review for abuse of discretion the agency's denial of a continuance. *Ahmed v. Holder*, 569 F.3d 1009, 1012 (9th Cir. 2009). We review de novo questions of law and constitutional claims. *Mohammed v. Gonzales*, 400 F.3d 785, 791-92 (9th Cir. 2005). We deny the petition for review.

The agency properly denied Perez-Farias's motion for recusal where he failed to show prejudice. *See Padilla-Martinez v. Holder*, 770 F.3d 825, 830 (9th Cir. 2014) ("To prevail on a due-process claim, a petitioner must demonstrate both a violation of rights and prejudice.").

The agency did not violate Perez-Farias's statutory or due process right to counsel where the IJ reasonably granted Perez-Farias a two-day continuance for the purpose of returning with his attorney when his attorney of record did not appear at the August 19, 2015, hearing. *See Hernandez-Gil v. Gonzales*, 476 F.3d 803, 808 (9th Cir. 2007) (where an "IJ is aware of the representation, if counsel fails to appear, the IJ must take reasonable steps to ensure that the immigrant's statutory right to counsel is honored"); *United States v. Moriel-Luna*, 585 F.3d 1191, 1201 (9th Cir. 2009) (IJs are "not obligated to grant indefinite continuances if [petitioner] did not produce counsel but refused to waive his right").

Perez-Farias established no error in the agency's denial of administrative closure under the factors applicable at the time of the hearing. *See Gonzalez-Caraveo v. Sessions*, 882 F.3d 885, 891 (9th Cir. 2018).

Finally, the agency did not abuse its discretion or violate due process in denying for lack of good cause Perez-Farias's request for a continuance while his application to renew Deferred Action for Childhood Arrivals was pending. *See* 8 C.F.R. § 1003.29; *Ahmed*, 569 F.3d at 1012 (listing factors to consider).

In light of our disposition, the government's motion to supplement the record (Docket Entry No. 28) is denied as moot.

PETITION FOR REVIEW DENIED.