

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

AUG 27 2019

FOR THE NINTH CIRCUIT

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

AURELIO MARTINEZ CLEMENTE,

Petitioner,

v.

WILLIAM P. BARR, Attorney General,

Respondent.

No. 17-73057

Agency No. A200-630-844

MEMORANDUM*

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

Submitted August 19, 2019**

Before: SCHROEDER, PAEZ, and HURWITZ, Circuit Judges.

Aurelio Martinez Clemente, 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 ("IJ") decision denying cancellation of removal. We have jurisdiction under 8 U.S.C. § 1252. We review for substantial evidence the agency's factual findings. *Najmabadi v. Holder*, 597 F.3d 983, 986 (9th Cir.

* 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).

2010). We deny the petition for review.

Substantial evidence supports the determination that Martinez Clemente failed to establish ten years of continuous physical presence for cancellation of removal, where the record includes a signed Form I-826 indicating that he accepted administrative voluntary departure in lieu of removal proceedings in 2011. *See* 8 U.S.C. § 1229b(b)(1)(A); *Ibarra-Flores v. Gonzales*, 439 F.3d 614, 618 (9th Cir. 2006) (alien’s acceptance of administrative voluntary departure interrupts the accrual of continuous physical presence); *Serrano Gutierrez v. Mukasey*, 521 F.3d 1114, 1117-18 (9th Cir. 2008) (requiring some evidence that alien was informed of and accepted the terms of the voluntary departure agreement). Even assuming Martinez Clemente’s testimony to be credible, *see Krotova v. Gonzales*, 416 F.3d 1080, 1084 (9th Cir. 2005) (“When the BIA’s decision is silent on the issue of credibility, despite an IJ’s explicit adverse credibility finding, we may presume that the BIA found the petitioner to be credible.”), his testimony does not compel a contrary conclusion, *cf. Ibarra-Flores*, 439 F.3d 614 at 619-20 (insufficient evidence that alien knowingly and voluntarily accepted voluntary departure where record did not contain the voluntary departure form and alien’s testimony suggested that he accepted return due to misrepresentations by immigration authorities).

The BIA sufficiently explained its decision. *See Najmabadi*, 597 F.3d at

990-91 (holding the BIA adequately considered evidence and sufficiently announced its decision).

PETITION FOR REVIEW DENIED.