

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

File Name: 13a0439n.06

No. 12-4299

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Apr 30, 2013
DEBORAH S. HUNT, Clerk

DIEGO RODRIGUEZ-HERNANDEZ,	)	
	)	
Petitioner,	)	
	)	
v.	)	ON PETITION FOR REVIEW
	)	FROM THE UNITED STATES
	)	BOARD OF IMMIGRATION
ERIC H. HOLDER, JR., Attorney General,	)	APPEALS
	)	
Respondent.	)	
	)	

BEFORE: MARTIN and COOK, Circuit Judges; GRAHAM, District Judge.*

PER CURIAM. Diego Rodriguez-Hernandez, a citizen of Mexico, petitions through counsel for review of an order by the Board of Immigration Appeals dismissing his appeal from a decision of an immigration judge (IJ) denying his application for cancellation of removal pursuant to 8 U.S.C. § 1229b(b)(1).

Rodriguez-Hernandez was born in Mexico in 1968. He entered the United States illegally in 1989 and has remained in this country since that time. He has three children, all United States citizens, with a woman of Mexican citizenship, who also illegally entered this country.

Cancellation of removal is a discretionary form of relief available to aliens who have been in the United States for at least ten years, have been of good moral character, have not been

*The Honorable James L. Graham, United States District Judge for the Southern District of Ohio, sitting by designation.

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convicted of certain criminal offenses, and whose family would suffer exceptional and extremely unusual hardship if they were removed from the United States. 8 U.S.C. § 1229b(b)(1). Rodriguez-Hernandez presented evidence at his hearing to establish that he qualified for this relief. The IJ concluded that Rodriguez-Hernandez met all but the last condition. Therefore, the IJ denied Rodriguez-Hernandez relief. However, Rodriguez-Hernandez was granted voluntary departure. The Board dismissed his appeal, and this petition for review followed.

Rodriguez-Hernandez argues that we have jurisdiction to review this case because the agency disregarded its own precedent in *Matter of Recinas*, 23 I. & N. Dec. 467 (BIA 2002). He cites *Aburto-Rocha v. Mukasey*, 535 F.3d 500, 503 (6th Cir. 2008), in support of his argument. In particular, he argues that, like the applicant in *Recinas*, he has shown that his children would suffer hardship in Mexico due to the lack of economic and educational opportunities.

We lack jurisdiction to review a denial of cancellation of removal unless a legal or constitutional claim is presented. *Ettienne v. Holder*, 659 F.3d 513, 517–18 (6th Cir. 2011). In this case, no legal question has been presented. Rodriguez-Hernandez has not shown that the agency disregarded the precedent of *Recinas*. In fact, the IJ cited that case, and performed the same analysis, distinguishing *Recinas* from the fact of this case. Rodriguez-Hernandez would have us compare the facts of his case to those of *Recinas*, and reach the opposite result. We lack jurisdiction to perform such a review. *See id.* at 519.

The petition for review is denied.