

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

---

**No. 08-1419**

---

GABRIEL MARTINEZ VASQUEZ, a/k/a Gabriel Martinez,

Petitioner,

v.

MICHAEL B. MUKASEY,

Respondent.

---

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

---

Submitted: December 18, 2008

Decided: January 22, 2009

---

Before NIEMEYER, MICHAEL, and TRAXLER, Circuit Judges.

---

Petition denied by unpublished per curiam opinion.

---

Arturo H. Hernandez, ARTURO H. HERNANDEZ, PC, Silver Spring, Maryland, for Petitioner. Gregory G. Katsas, Assistant Attorney General, Carol Federighi, Senior Litigation Counsel, Paul T. Cygnarowicz, Trial Attorney, Washington, D.C., for Respondent.

---

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Gabriel Martinez Vasquez ("Martinez"), a native and citizen of Mexico, petitions for review of an order of the Board of Immigration Appeals ("Board") denying his motion to remand and dismissing his appeal from the immigration judge's order denying his application for cancellation of removal. The immigration judge found Martinez failed to show he was of good moral character, that he had been continuously present in the United States for ten years or that his removal would be an exceptional and extremely unusual hardship to his family. See 8 U.S.C. § 1229b(b)(1) (2006). We deny the petition for review.

We are without jurisdiction to review the Board's affirmance of the immigration judge's finding that Martinez was not of good moral character or that his removal would be a hardship to his family, as defined under 8 U.S.C. § 1229b(b)(1). See Jean v. Gonzales, 435 F.3d 475, 481-82 (4th Cir. 2006) (court does not have jurisdiction to review the denial of cancellation of removal); see also Obioha v. Gonzales, 431 F.3d 400, 405 (4th Cir. 2005) ("It is quite clear that the gatekeeper provision bars our jurisdiction to review a decision of the B[oard] to actually deny a petition for cancellation of removal or the other enumerated forms of discretionary relief."). We find substantial evidence supports the Board's finding that

Martinez was not continuously present in the United States for ten years prior to service of the notice to appear.

The Board's decision denying Martinez's motion to remand is reviewed for abuse of discretion. Obioha, 431 F.3d at 408. We find no abuse of discretion because Martinez failed to establish that the new evidence he intended on submitting was previously unavailable.

Accordingly, we deny the petition for review. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

PETITION DENIED