FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

HECTOR MONTERO-MARTINEZ;
GREGORIO PEDROs2-O888.6Tj 0 -1005 TD -0.005 TDc 0No. 99-70596ROs2--O888NEZ;

Opinion by Judge Pregerson

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COUNSEL

I. FACTS AND PRIOR PROCEEDINGS.

Montero-Hernandez and Montero-Martinez are father and son. They are natives and citizens of Mexico who entered the United States in 1986.

In April 1997, the Immigration and Naturalization Service (INS) served upon Petitioners a Notice to Appear, alleging that Petitioners were removable under 8 U.S.C. §1182(a)(6)(A)(i) because they had entered the United States without inspection. Petitioners admitted the allegations contained in the Notice and conceded removability. Because they had no other viable options for remaining in the United States, they applied for cancellation of removal pursuant to §1229b(b)(1).

Petitioners appeared before an Immigration Judge (IJ) in April 1998. At the hearing, they both conceded that they did not have a qualifying relative under § 1229b(b)(1)(D). Although Montero-Hernandez had an adult daughter who was a lawful permanent resident, he acknowledged that she was too old to qualify as a child under the INS regulations.

The IJ found Petitioners statutorily ineligible for cancellation of removal and allowed them to voluntarily depart within 60 days. Petitioners appealed to the BIA arguing that they were entitled to cancellation of removal. The BIA found them statutorily ineligible on the same grounds as did the IJ--
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II. WE HAVE JURISDICTION TO REVIEW THE

8 U.S.C. §1252(a)(2)(B) (2001).

The underlying discretionary relief sought by the peti-

Hernandez's adult daughter qualifies as a "child " for the purposes of §1229b(b)(1)(D) -- and the BIA's construction of the INA in general -- is not a "judgment regarding the granting of relief."

B. Discussion

We take as our starting point two important principles of statutory construction recently affirmed by the Supreme

ment" is ambiguous is based on a careful study of the entire INA, which is codified at Title 8 of the U.S. Code. This study is revealing: when the word "judgment" is not being used in the INA to refer to a formal order given by a court (i.e., a "judgment of conviction"), it is only used to refer to the exercise of discretion, or to a discretionary determination.**5** This suggests that Congress similarly intended the word"judgment" i   ie11252(a)(2)(B)(i)d to refer(onld to discretionara) Tj   T*   0 Tc 0 Tw ___________________________

If "judgment" in subsection (i) is interpreted to encompass all

If Congress had wanted to eliminate judicial review over all decisions by the BIA regarding discretionary relief, surely it would have employed the same language in §1252(a)(2)(B)(i) that it employed in §1252(a)(2)(A)(i), which directly precedes §1252(a)(2)(B)(i) in the statutory code. In other words, Congress could have written §1252(a)(2)(B)(i) to read: "[N]o court shall have jurisdiction to review any individual determination regarding the granting of relief under [various provisions in the INA setting forth eligibility requirements for discretionary relief]. " But Congress did not use the phrase, "any individual determination." Instead, Congress used the term "judgment." **8**

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8 The relevant transitional rule, IIRIRA §309(c)(4)(E), provides that "there shall be no appeal of any discretionary decision under [various INA sections setting forth eligibility requirements for discretionary relief]." The permanent rule substitutes the phrase "any judgment" for the phrase "any discretionary decision" in the transitional rule. The spaa0eegislinavase
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when Congress really wanted to eliminate judicial review