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U.S. COURT OF APPEALS

## NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

IHAB GAMAL EL DIN EL ZOHAIRY,

Petitioner,

v.

LORETTA E. LYNCH, Attorney General,

Respondent.

No. 15-70913

Agency No. A087-236-561

MEMORANDUM\*

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

Submitted June 14, 2016\*\*

Before: BEA, WATFORD, and FRIEDLAND, Circuit Judges.

Ihab Gamal El Din El Zohairy, a native and citizen of Egypt, petitions for review of the Board of Immigration Appeals' ("BIA") order dismissing his appeal from an immigration judge's decision denying his application for adjustment of status. Our jurisdiction is governed by 8 U.S.C. § 1252. We review de novo

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\* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

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

claims of ineffective assistance of counsel. *Mohammed v. Gonzales*, 400 F.3d 785, 791-92 (9th Cir. 2005). We deny in part and dismiss in part the petition for review.

The agency did not err in denying El Zohairy's ineffective assistance of counsel claim for failure to establish prejudice, where he has not shown how different conduct by his prior attorney may have affected the outcome of proceedings. *See id.* at 793 (to prevail on an ineffective assistance of counsel claim, a petitioner must demonstrate that he was prejudiced by counsel's performance).

In light of the dispositive determination that El Zohairy did not establish prejudice, we do not reach his contentions regarding his compliance with the threshold requirements of *Matter of Lozada*, 19 I. & N. Dec. 637 (BIA 1988). *See Simeonov v. Ashcroft*, 371 F.3d 532, 538 (9th Cir. 2004).

We lack jurisdiction to consider El Zohairy's unexhausted claim that he should be permitted to seek relief based on changed circumstances. *See Tijani v. Holder*, 628 F.3d 1071, 1080 (9th Cir. 2010).

**PETITION FOR REVIEW DENIED in part; DISMISSED in part.**