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U.S. COURT OF APPEALS

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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JOSE EDGAR GUEVARA, AKA Joe Guevara, AKA Jose Guevara Villaneva, Petitioner, v. MERRICK B. GARLAND, Attorney General, Respondent.	No. 16-73456 Agency No. A094-302-404 MEMORANDUM[*]

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

Submitted November 18, 2022[**]
San Francisco, California

Before: S.R. THOMAS and BENNETT, Circuit Judges, and DORSEY,[***] District Judge.

[*] 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).

[***] The Honorable Jennifer A. Dorsey, United States District Judge for the District of Nevada, sitting by designation.

Jose Edgar Guevara, a native and citizen of El Salvador, petitions for review of a Board of Immigration Appeals ("BIA") decision denying his appeal from an immigration judge's ("IJ") decision finding Guevara removable and denying his application for cancellation of removal under 8 U.S.C. § 1229b(a). In the context of cancellation, we have jurisdiction to review questions of law, but we may not review the IJ's or BIA's findings of fact. 8 U.S.C. §§ 1252(a)(2)(B)(i), (D). When a petitioner failed to raise a due process challenge below, we generally "retain jurisdiction" to consider that challenge, but "we may not entertain due process claims based on correctable procedural errors unless the [petitioner] raised them below." *Agyeman v. Immigr. & Naturalization Serv.*, 296 F.3d 871, 877 (9th Cir. 2002). We review questions of law de novo. *Ridore v. Holder*, 696 F.3d 907, 911 (9th Cir. 2012). Because the parties are familiar with the factual and procedural history of the case, we need not recount it here. We dismiss in part and deny in part the petition for review.

I

We lack jurisdiction to consider Petitioner's due process arguments that the IJ misstated Guevara's statute of removability and his plea in criminal court. Petitioner made neither argument below, and both alleged errors were procedural and correctable by the BIA. *Agyeman*, 296 F.3d at 877; *see also Barron v.*

Ashcroft, 358 F.3d 674, 676–78 (9th Cir. 2004) (we could not review petitioners' claims not raised below that the IJ denied them the opportunity to present their case when the IJ proceeded to hear their case even though their attorney failed to appear for their hearing). We therefore dismiss this part of the petition.

II

We also lack jurisdiction to consider Petitioner's argument that the BIA made factual errors when finding that Petitioner was not "admitted" to the United States. 8 U.S.C. § 1252(a)(2)(B)(i). We therefore also dismiss this part of the petition.

Insofar as the BIA's decision states that Guevara was not admitted "in any status" in 1995 because, at that time, Guevara entered without authorization, the decision was legally erroneous. *See Saldivar v. Session*, 877 F.3d 812, 815–19 (9th Cir. 2017) (holding that "in any status" means in *any* status, whether lawful or unlawful). However, any error was harmless. As discussed above, this Court may not disturb the BIA's determination that Guevara was not admitted for cancellation purposes, so Guevara cannot show he is eligible for cancellation of removal. We therefore deny this part of the petition.

PETITION DISMISSED in part and DENIED in part.