

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

NOV 23 2022

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

ANTONIO OROZCO-GAETA,

No. 16-73942

Petitioner,

Agency No. A090-004-634

v.

MEMORANDUM*

MERRICK B. GARLAND, Attorney
General,

Respondent.

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

Submitted November 15, 2022**

Before: CANBY, CALLAHAN, and BADE, Circuit Judges.

Antonio Orozco-Gaeta, a native and citizen of Mexico, petitions pro se for review of the Board of Immigration Appeals' ("BIA") order denying his motion to reopen removal proceedings. We have jurisdiction under 8 U.S.C. § 1252. We review de novo questions of law, including claims of due process violations due to

* 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).

ineffective assistance of counsel, and we review for abuse of discretion the BIA's denial of a motion to reopen. *Mohammed v. Gonzales*, 400 F.3d 785, 791-92 (9th Cir. 2005). We deny the petition for review.

The BIA did not abuse its discretion in declining to reopen based on ineffective assistance of counsel where Orozco-Gaeta failed to comply with the procedural requirements of *Matter of Lozada*, 19 I. & N. Dec. 637 (BIA 1988), and failed to show prejudice from the performance of former counsel, *see Lata v. INS*, 204 F.3d 1241, 1246 (9th Cir. 2000) (requiring error and substantial prejudice to prevail on a due process challenge).

In his opening brief, Orozco-Gaeta does not raise, and therefore waives, any challenge to the agency's dispositive determinations that he failed to establish prima facie eligibility for relief based on changed country conditions. *See Lopez-Vasquez v. Holder*, 706 F.3d 1072, 1079-80 (9th Cir. 2013) (issues not specifically raised and argued in an opening brief are waived).

The temporary stay of removal remains in place until the mandate issues.

PETITION FOR REVIEW DENIED.