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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MAXIMILIANO GUEVARA DAVILA, Petitioner, v. MERRICK B. GARLAND, Attorney General, Respondent.	No. 18-71000 Agency No. A201-174-102 MEMORANDUM*

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

Submitted December 9, 2022**
Pasadena, California

Before: BEA, IKUTA, and CHRISTEN, Circuit Judges.

Maximiliano Guevara Davila, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals (BIA) decision denying his application for cancellation of removal and protection under the Convention Against Torture (CAT). We have jurisdiction pursuant to 8 U.S.C. § 1252(a). We

* 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).

review de novo questions of law. *Ahmed v. Holder*, 569 F.3d 1009, 1012 (9th Cir. 2009). We review for substantial evidence the denial of CAT relief. *Konou v. Holder*, 750 F.3d 1120, 1124 (9th Cir. 2014). Because the parties are familiar with the facts, we recite only those facts necessary to decide the petition.

Guevara Davila entered the United States without inspection in or around October 2000. On February 17, 2011, the Department of Homeland Security (DHS) initiated removal proceedings. The notice to appear (NTA) filed with the immigration court did not specify the time and place of Guevara Davila's removal hearing, but on February 28, 2011, the immigration court issued a hearing notice to Guevara Davila, scheduling his initial hearing for March 21, 2011, at 1:00 p.m., at the immigration court in Lancaster, California. Petitioner conceded removability and subsequently filed for cancellation of removal and protection under the CAT.

The Immigration Judge (IJ) found that Guevara Davila failed to demonstrate his three U.S. citizen children would suffer exceptional and extremely unusual hardship if he were removed and that he did not establish he would be more likely than not to face torture in Mexico. The BIA affirmed.

Before the Ninth Circuit, Guevara Davila raises three arguments: first, he argues that the immigration court lacked jurisdiction over his proceedings because the NTA did not specify the time and place of his initial hearing; second, he argues the IJ and BIA applied the wrong legal standard in determining exceptional and

extremely unusual hardship; and third, he argues that the BIA erred in finding that he failed to establish he was more likely than not to face torture if removed to Mexico.

Guevara Davila's first argument fails under our recent decision in *United States v. Bastide-Hernandez*, 39 F.4th 1187 (9th Cir. 2022). There, we held that "[a] defective NTA does not affect the immigration court's subject matter jurisdiction." *Id.* at 1190 (internal quotation marks omitted) (capitalization altered). Furthermore, "filing of an undated NTA that is subsequently supplemented with a notice of hearing," as DHS did here, complies with the applicable regulations. *Id.* at 1193.

Guevara Davila's second argument is that the IJ and BIA applied the wrong legal standard in denying cancellation of removal because they did not properly consider certain hardship factors. We can discern no error in the standard the IJ and BIA applied. To the extent Guevara Davila asks us to reweigh the hardship factors, this court lacks jurisdiction to do so. *Romero-Torres v. Ashcroft*, 327 F.3d 887, 892 (9th Cir. 2003).

Finally, substantial evidence supports the BIA's conclusion that Guevara Davila is ineligible for CAT relief. He provides no indication that the criminal activity his family members in Mexico have experienced amounts to torture, nor that he would be tortured if removed. Similarly, "Petitioner['s] generalized

evidence of violence and crime in Mexico is not particular to Petitioner[] and is insufficient to" show he is "more likely than not [to be] tortured if returned to Mexico." *Delgado-Ortiz v. Holder*, 600 F.3d 1148, 1152 (9th Cir. 2010). As such, the BIA's conclusion is supported by substantial evidence.

PETITION DENIED.