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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JAIME CRUZ TORREZ BRAVO, Petitioner, v. MERRICK B. GARLAND, Attorney General, Respondent.	No. 19-73081 Agency No. A087-913-666 MEMORANDUM[*]

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

Submitted November 17, 2022[**]
San Francisco, California

Before: S.R. THOMAS, BENNETT, and SUNG, Circuit Judges.

Jaime Torrez Bravo, a native and citizen of Mexico, petitions for review of a Board of Immigration Appeals ("BIA") decision denying his appeal from an immigration judge's ("IJ") decision denying his cancellation of removal and

[*] 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).

further denying his motion for remand to the IJ based on new evidence. In the context of cancellation, we have jurisdiction to review questions of law, but we may not review the IJ or BIA's findings of fact. 8 U.S.C. §§ 1252(a)(2)(B)(i), (D).

We review the BIA's denial of a motion to remand for an abuse of discretion. *See Movsisian v. Ashcroft*, 395 F.3d 1095, 1098 (9th Cir. 2005). 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 decide the factual question of whether the IJ or BIA improperly found that Petitioner's children had family in the United States who could support them financially.[1] 8 U.S.C. § 1252(a)(2)(B)(i). We therefore dismiss this part of the petition.

[1] Torrez also argues the IJ and BIA mischaracterized his middle child's learning progress, but this too is a factual question which we cannot review.

II

We have jurisdiction to answer the legal question of whether the BIA's decision, which was "based on the factual findings of the Immigration Judge," misstated the IJ's findings of fact as to whether Petitioner could financially support his children if he were deported. *See* 8 U.S.C. § 1252(a)(2)(D); *Ridore*, 696 at 918–19. However, even assuming the BIA erred in finding "insufficient evidence was presented to establish that [Petitioner] would be unable to work if he [was] removed," any error was harmless. *In re Gonzalez Recinas*, 23 I. & N. Dec. 467 (BIA 2002) (en banc) represents "the outer limit of the narrow spectrum of cases in which the exceptional and extremely unusual hardship standard will be met," *id.* at 470, and this case differs meaningfully from *Recinas.* There, the BIA found that if Recinas and her children had to move to Mexico, Recinas would have no one to care for the children while she worked to support them. *Id.* at 470–71.

In comparison, here, the children would remain in the United States with their mother, perhaps supported by their family in the United States, even if Torrez could not provide them sufficient financial support. Accordingly, because *Recinas* is the "outer limit" of cancellation cases, this part of the petition is denied.

III

The BIA did not abuse its discretion in concluding that remand was not warranted based on the Decree of Dissolution in Petitioner's former marriage. For a motion to remand, the petitioner must show "the evidence sought to be offered is material and was not available at his former hearing." *In Re S-V-*, 22 I. & N. Dec. 1306, 1307 (BIA 2000); 8 C.F.R. § 1003.2(c)(1). Petitioner argues that the Decree of Dissolution of his former marriage warrants remand because it reveals that the family court made Torrez the primary residential parent for his eldest child and that Torrez's ex-wife's financial prospects are bleak. But the BIA had reason to find that this new evidence was "unlikely to result in a change in the case." As to custody, the decree includes partial custody for the mother and was based on an "agree[ment]" between Torrez and the mother, suggesting that the eldest child could return to living with her mother if Torrez was deported. And as to Petitioner's ex-wife's financial prospects, the Decree suggests that the children's mother is fully capable of beginning to provide for herself and her children, in some ways undermining Petitioner's case. Thus, the BIA did not abuse its discretion in finding these facts did not warrant remand, and this part of the petition is denied.

IV

Given this analysis, Petitioner's "claim . . . clearly lacks merit," so we "need not today take a definitive side" on whether this court has jurisdiction to review whether the BIA correctly determined that the established facts did not meet the cancellation standard. *See De La Rosa-Rodriguez v. Garland*, 49 F.4th 1282, 1291 (9th Cir. 2022). Accordingly, this part of the petition is denied.

Petition DISMISSED in part, DENIED in part.