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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

SOUVANH SAENGVILAY, Petitioner, v. MERRICK B. GARLAND, Attorney General, Respondent.	No. 20-73259 Agency No. A071-439-103 MEMORANDUM[*]

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

Submitted December 8, 2022[**]
Phoenix, Arizona

Before: WARDLAW and BUMATAY, Circuit Judges, and ZOUHARY,[***] 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 Jack Zouhary, United States District Judge for the Northern District of Ohio, sitting by designation.

Souvanh Saengvilay, a native and citizen of Laos, petitions for review of the Board of Immigration Appeals' (BIA) decision affirming an immigration judge's (IJ) removability determination and discretionary denial of cancellation of removal. As the parties are familiar with the facts, we do not restate them here.

We lack jurisdiction to consider Saengvilay's claims and dismiss the petition. First, Saengvilay was convicted of a criminal offense covered by 8 U.S.C. § 1227(a)(2)(B)(i), and we therefore lack jurisdiction to review his final order of removal. *Id.* § 1252(a)(2)(C); *Randhawa v. Ashcroft*, 298 F.3d 1148, 1152 (9th Cir. 2002) (holding that we retain jurisdiction to determine whether this jurisdictional bar applies). Second, although we have jurisdiction to consider whether the IJ applied the correct legal standard—a question of law raised in the context of a discretionary denial of cancellation—because the IJ applied the correct legal standard, we "must conclude that [Saengvilay's] claims are 'so insubstantial and frivolous' as to preclude our jurisdiction over them." *Mendez-Castro v. Mukasey*, 552 F.3d 975, 980 (9th Cir. 2009) (quoting *Barco-Sandoval v. Gonzalez*, 516 F.3d 35, 40 (9th Cir. 2007)).

1. The IJ faithfully applied the categorical approach set forth in *Taylor v. United States*, 495 U.S. 575, 600–02 (1990) to conclude that section 11358(c) of the California Health and Safety Code is a crime "relating to a controlled substance." 8 U.S.C. § 1227(a)(2)(B)(i). There is a "logical or causal connection"

between the least of the acts criminalized under section 11358(c) of the California Health and Safety Code, and marijuana, a controlled substance defined in the Controlled Substances Act, 21 U.S.C. §§ 802(16) (defining "marihuana"), 812 Schedule I (c)(10) (listing marijuana in schedule of controlled substances). *Mielewczyk v. Holder*, 575 F.3d 992, 995 (9th Cir. 2009). A conviction under section 11358(a) requires that an individual physically handle at least six living marijuana plants. In *Mielewcyzck*, we remarked that "[e]ven offenses that do not require personal contact with the drug have the requisite connection." *Id*. Here, personal contact is required, and the conduct proscribed by section 11358(a) easily satisfies the "broad[]" construction we give to "laws specifically aimed at controlled substance activity[.]" *Id.* Saengvilay has been convicted of more than one controlled substance-related offense and therefore cannot assert the personal-use exception under 8 U.S.C. § 1227(a)(2)(B)(i). *Rodriguez v. Holder*, 619 F.3d 1077, 1079–80 (9th Cir. 2010).

In light of our holding that Saengvilay was convicted of an offense covered by 8 U.S.C. § 1227(a)(2)(B)(i), we lack jurisdiction to review his final order. *Id.* § 1252(a)(2)(C).

2. Saengvilay fails to raise a colorable legal claim regarding the agency's discretionary denial of cancellation of removal. We have jurisdiction to consider "whether an IJ failed to apply a controlling standard governing a discretionary

determination" and determine whether such claim is "colorable." *Mendez-Castro*, 552 F.3d at 979; 8 U.S.C. § 1252(a)(2)(D). The record does not support Saengvilay's contention that the IJ required a showing of rehabilitation as a "prerequisite" for cancellation. The IJ remarked that "significant evidence of rehabilitation is warranted to offset [Saengvilay]'s criminal history," but did not make this a dispositive factor or threshold inquiry. *See Matter of Edwards*, 20 I. & N. Dec. 191, 196 (BIA 1990); *In re Sotelo-Sotelo*, 23 I. & N. Dec. 201, 204 (BIA 2001) ("[W]e reiterate that we will not apply a threshold test in cancellation of removal cases. Instead, we will weigh the favorable and adverse factors to determine whether, on balance" a noncitizen "warrants a favorable exercise of discretion") (citation omitted). Rehabilitation was one of several factors the IJ weighed alongside positive and negative factors, such as Saengvilay's family ties, long-term residence in the United States, and criminal history. "Because the IJ applied the correct legal standard in this case . . . , we must conclude that [Saengvilay's] claims are 'so insubstantial and frivolous' as to preclude our jurisdiction over them." *Mendez-Castro*, 552 F.3d at 980 (quoting *Barco-Sandoval v. Gonzalez*, 516 F.3d 35, 40 (9th Cir. 2007)).

3. We also lack jurisdiction to consider Saengvilay's arguments that the IJ improperly weighed evidence of rehabilitation or abused its discretion in finding his testimony credible in some respects and not others. *Mejia v. Gonzalez*, 499

F.3d 991, 999 (9th Cir. 2007) (holding that 8 U.S.C. § 1252(a)(2)(B)(i) precludes review of petitioner's claim that "the BIA[] fail[ed] to consider his extensive rehabilitation" in context of inadmissibility waiver); *Patel v. Garland*, 142 S. Ct. 1614, 1624 (2022) (same for challenge to credibility determination).[1]

PETITION DISMISSED.

[1] Saengvilay's motion for stay of removal pending our review of his case is denied as moot.