NOT FOR PUBLICATION

FILED

DEC 1 2022

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

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JOSE MANUEL ARCE-MARTINEZ, Petitioner, v. MERRICK B. GARLAND, Attorney General, Respondent.	No. 20-73483 Agency No. A200-963-651 MEMORANDUM*

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

Argued and Submitted November 16, 2022
San Francisco, California

Before: McKEOWN and KOH, Circuit Judges, and SESSIONS,** District Judge.

Jose Manuel Arce-Martinez ("Arce-Martinez"), a native and citizen of Mexico, petitions for review of a decision of the Board of Immigration Appeals ("BIA") affirming an order of an Immigration Judge ("IJ") denying cancellation of removal. We deny the petition for review.

---

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The Honorable William K. Sessions III, United States District Judge for the District of Vermont, sitting by designation.

To the extent that Arce-Martinez argues that the Agency erred by placing too much weight on his alternative means of immigrating, we do not have jurisdiction to review this determination. *See* 8 U.S.C. § 1252(a)(2)(B)(i); *Mendez-Castro v. Mukasey*, 552 F.3d 975, 980 (9th Cir. 2009) (holding that courts of appeals do not have jurisdiction to re-weigh the hardship factors in cancellation of removal cases). The BIA considered several facts, including medical issues and compelling educational needs, when determining whether Arce-Martinez's family would suffer exceptional and extremely unusual hardship upon his removal from the United States. The BIA also considered that Arce-Martinez has an alternative path for obtaining lawful immigration status. The IJ posited that such alternative path was likely to be approved. The BIA concurred, finding that because of his alternative path to lawful status, Arce-Martinez's separation from his family would not necessarily be permanent. In the end, the BIA affirmed the denial of cancellation of removal based upon the totality of circumstances. We have no jurisdiction to review that factual determination. *Patel v. Garland*, 142 S. Ct. 1614, 1627 (2022) ("the text and context of § 1252(a)(2)(B)(i)—which is, after all, a jurisdiction-stripping statute—clearly indicate that judicial review of fact determinations is precluded in the discretionary-relief context").

To the extent that Arce-Martinez argues that it was legal error for the BIA to apply a categorical rule, we have jurisdiction because this is a question of law. *See*

8 U.S.C. § 1252(a)(2)(D); *Mendez-Castro*, 552 F.3d at 979 ("whether an IJ failed to apply a controlling standard governing a discretionary determination is a question over which we have jurisdiction"). Consideration of Arce-Martinez's alternative path to lawful immigration status did not constitute legal error under *Arteaga-De Alvarez v. Holder*, 704 F.3d 730 (9th Cir. 2012). There, the BIA ruled that such an alternative path undercut the petitioner's cancellation of removal claim. *Id.* at 735. *Arteaga-De Alvarez* held that in doing so, "the BIA committed an error of law by relying on a categorical rule that the alternative means of immigration factor *necessarily* undercuts an applicant's claimed hardship in every case." *Id.* at 741–42. Here, there was no such application of a categorical rule. The IJ and BIA did not state that an alternative path always or necessarily undercuts a noncitizen's claim of exceptional and extremely unusual hardship. Instead, the IJ and the BIA conducted an individualized review and appropriately determined that, based on Arce-Martinez's particular circumstances, his alternative path was one factor that weighed against a determination of hardship. *See id.* at 741 ("We do not mean to suggest that alternative means of immigrating to the United States can *never* be a negative factor in a hardship determination.").

PETITION DENIED.