

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

Nos. 18-11425 & 18-13052
Non-Argument Calendar

Agency No. A094-857-982

FAUSTO NORBERTO RODRIGUEZ REGALADO,

Petitioner,

versus

U.S. ATTORNEY GENERAL,

Respondent.

Petitions for Review of Decisions of the
Board of Immigration Appeals

(June 28, 2019)

Before MARTIN, NEWSOM, and BRANCH, Circuit Judges.

PER CURIAM:

Fausto Rodriguez Regalado seeks review of the agency order denying his application for cancellation of removal and of its later order denying his motion to reopen, reconsider, and remand. He argues that the determinations about his good moral character and the hardship his family would face were erroneous. He also argues that his due process rights were violated when his motion to reopen was denied. Because we lack jurisdiction to review these denials of discretionary relief, we must dismiss his petitions.

I

Rodriguez, a native and citizen of El Salvador, entered the United States without admission in 2001. In 2013, he was charged with, and conceded, removability. He then applied for cancellation of removal and adjustment of status, asserting that his removal would result in exceptional and extremely unusual hardship to his spouse and children. At his removal hearing in 2017, Rodriguez testified that one of his children receives special education. He also testified about his criminal history in the United States. He admitted that he had been arrested in 2006 for domestic violence against his pregnant wife, in 2008 in connection with drugs, and again for driving under the influence with a suspended license and for driving without a license two or three times. Rodriguez's attorney also noted that he had been arrested 15 days earlier for possession of a controlled substance and the case was pending.

The Immigration Judge (IJ) found that Rodriguez was not a person of good moral character based upon his history of arrests, in particular his arrest for domestic violence against his pregnant spouse, his numerous vehicular arrests, and his recent arrest despite the imminent threat of removal. “[T]he Court would have thought that with all this arrest history and the respondent’s case pending in court, he would have been more careful not to again have been arrested.” The IJ also found that Rodriguez had not established exceptional and extremely unusual hardship to his family because there was no evidence that he would be unable to support his family from El Salvador, that his wife would be unable to work, or that his son would be unable to continue receiving special education if his family remained in the United States.

The Board of Immigration Appeals (BIA) agreed with the IJ’s assessment of and reasoning about Rodriguez’s failure to establish good moral character, especially in light of his repeated arrests and convictions. Because the BIA found him ineligible for cancellation of removal on that basis, it did not reach the IJ’s additional finding that he had not established the requisite hardship to a relative.

Rodriguez timely moved to reopen, reconsider, and remand the proceedings, asserting that his 2017 arrest was for soliciting prostitution, not possessing a controlled substance, documentation of that arrest was not available at the time of his hearing, and his 2008 arrest was not for possessing a controlled substance. The

BIA denied the motion because his argument about the 2008 arrest should have been raised on appeal, he still lacks good moral character, and his own counsel was the one who told the IJ that the 2017 arrest was for possessing a controlled substance.

Rodriguez now petitions for review of both orders of the BIA.

II

The cancellation of removal of a removable nonpermanent resident alien is discretionary relief that the Attorney General may order if the alien (A) has been physically present in the United States continuously for at least 10 years; (B) has been a person of good moral character during that period; (C) has not been convicted of certain crimes; and (D) establishes that removal would cause exceptional and extremely unusual hardship to a qualifying relative. 8 U.S.C. § 1229b(b)(1).

Rodriguez first argues that the agency should have ordered cancellation of removal because he is a person of good moral character. Congress has listed several classes of persons who shall not be regarded as persons of good moral character before explaining that a person not within any of those classes may still be found not to be of good moral character “for other reasons.” 8 U.S.C. § 1101(f). But the determination that a person lacks good moral character “for other reasons” is discretionary. *Jimenez-Galicia v. U.S. Att’y Gen.*, 690 F.3d 1207, 1210 (11th Cir.

2012). And this Court lacks jurisdiction to review the BIA’s discretionary decision regarding cancellation of removal. *See* 8 U.S.C. § 1252(a)(2)(B);¹ *Gonzalez-Oropeza v. U.S. Att’y Gen.*, 321 F.3d 1331, 1332 (11th Cir. 2003).

Rodriguez argues that we have jurisdiction nonetheless because he is raising a question of law about the meaning of “good moral character.” *See* 8 U.S.C. § 1252(a)(2)(D).² In particular, Rodriguez argues that his candor about his criminal history in his testimony before the IJ precludes a finding that he lacks good moral character, and that a criminal history involving fraud or deceit is required to support a finding that an alien lacks good moral character. We do not agree that he has raised a “genuine” question of law about the agency’s determination. *See Jimenez-Galicia*, 690 F.3d at 1211 (“[W]e must look hard at Petitioner’s actual arguments—not just his description of his claims—to determine whether we have jurisdiction.”). Rodriguez’s arguments are really about how the agency weighed the equities of the positive and negative factors of his moral character—specifically, that it should have given more positive weight to his candor, and less negative weight to his non-fraud criminal history. We thus lack jurisdiction to

¹ “[N]o court shall have jurisdiction to review . . . any judgment regarding the granting of relief under section . . . 1229b” 8 U.S.C. § 1252(a)(2)(B)(i).

² “Nothing in subparagraph (B) . . . shall be construed as precluding review of constitutional claims or questions of law raised upon a petition for review filed with an appropriate court of appeals in accordance with this section.” 8 U.S.C. § 1252(a)(2)(D).

review the BIA's discretionary decision that Rodriguez is not a person of good moral character.

Rodriguez also seeks review of the IJ's finding that he has failed to establish that his relatives would suffer exceptional and extremely unusual hardship from his removal. But that argument is not properly before us, because the BIA expressly declined to review the IJ's hardship finding. "When the BIA issues a decision, we review only that decision, except to the extent the BIA expressly adopts the IJ's decision." *Lopez v. U.S. Att'y Gen.*, 504 F.3d 1341, 1344 (11th Cir. 2007). We therefore dismiss in full Rodriguez's petition for review of the BIA's order affirming the IJ's denial of his application for cancellation of removal and adjustment of status.

III

Rodriguez's second petition for review challenges the BIA's denial of his motion to reopen, reconsider, and remand. Just as we lack jurisdiction under § 1252(a)(2)(B)(i) to review the underlying discretionary determination, we also lack jurisdiction to review the denial of a motion to reopen that determination. *Guzman-Munoz v. U.S. Att'y Gen.*, 733 F.3d 1311, 1314 (11th Cir. 2013).

Although Rodriguez phrases his argument about his motion to reopen in constitutional terms of due process, "[a]n alien does not have a constitutionally protected interest in discretionary forms of relief, such as a decision to grant or

deny a motion to reopen.” *Id.*; *see* 8 C.F.R. § 1003.2(a) (providing that the BIA “has discretion to deny a motion to reopen even if the party moving has made out a prima facie case for relief”). Accordingly, we dismiss Rodriguez’s petition for review of the denial of his motion to reopen, reconsider, and remand.

IV

PETITIONS DISMISSED.