[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 20-13742
Non-Argument Calendar

Agency No. A205-211-859

JACINTO MENDEZ-GUTIERREZ,

Petitioner,

versus

U.S. ATTORNEY GENERAL,

Respondent.

Petition for Review of a Decision of the
Board of Immigration Appeals

(June 1, 2021)

Before NEWSOM, BRASHER and MARCUS, Circuit Judges.

PER CURIAM:

Jacinto Mendez Gutierrez seeks review of the Board of Immigration Appeals' ("BIA") final order affirming the Immigration Judge's ("IJ") denial of his application for cancellation of removal under the Immigration and Nationality Act

("INA"), arguing that he has been physically present in the United States for ten years and that the "exceptional and extremely unusual hardship" requirement violates the Fifth Amendment's Due Process and Equal Protection Clauses. After careful review, we deny the petition in part and dismiss it in part.

We review our subject matter jurisdiction de novo. Juene v. U.S. Att'y Gen., 810 F.3d 792, 799 (11th Cir. 2016). We also review constitutional claims de novo. Ali v. U.S. Att'y Gen., 443 F.3d 804, 808 (11th Cir. 2006). When the BIA issues an order, we review only that order, except to the extent the BIA expressly adopts the IJ's order or expressly agrees with the IJ's findings. Juene, 810 F.3d at 799.

Arguments not raised in a petitioner's initial brief are deemed abandoned. Ruga v. U.S. Att'y Gen., 757 F.3d 1193, 1196 (11th Cir. 2014). A party must specifically and clearly identify a claim in its brief, for instance by devoting a discrete section of its argument to that claim; otherwise, it will be deemed abandoned and its merits will not be addressed. Zhou Hua Zhu v. U.S. Att'y Gen., 703 F.3d 1303, 1316 n.3 (11th Cir. 2013).

While we retain jurisdiction over final orders of removal, we may review a final order of removal only if the alien has exhausted all administrative remedies available to the alien as of right. 8 U.S.C. § 1252(d)(1). The exhaustion requirement is jurisdictional and precludes review of a claimant's argument not presented to the BIA. Amaya Artunduaga v. U.S. Att'y Gen., 463 F.3d 1247, 1250 (11th Cir. 2006).

Although not stringent, exhaustion requires the petitioner to have previously argued the core issue now on appeal before the BIA. Indrawati v. U.S. Att'y Gen., 779 F.3d 1284, 1297 (11th Cir. 2015). Conclusory statements do not satisfy this requirement. Id. And while a petitioner need not use precise legal terminology or provide a well-developed argument to exhaust his claim, he must provide information sufficient to enable the BIA to review and correct any errors below. Id.

We've indicated, however, that constitutional claims raised for the first time in our Court that address issues beyond the power of the BIA to address in adjudicating an individual's case may not require exhaustion. Bing Quan Lin v. U.S. Att'y Gen., 881 F.3d 860, 867-68 (11th Cir. 2018); see also Sundar v. I.N.S., 328 F.3d 1320, 1325 (11th Cir. 2003) (holding that the exhaustion requirement applies to claims regarding the BIA's application of its own precedent while emphasizing that the claim at issue was not a constitutional challenge to the INA itself or a due process claim that could not be resolved by a BIA decision). Still, where a procedural due process claim properly falls within the immigration courts' power to review and provide a remedy, the claim must be exhausted before we can consider it. Bing, 881 F.3d at 868. In holding in Bing that the exhaustion requirement applied to the petitioner's constitutional claims, we noted that none of the petitioner's claims raised a larger challenge to the immigration process beyond the power of the BIA to address. Id. We further observed that, while the petitioner did challenge the

proceedings below, the petitioner did not mention due process, the Constitution, or present a constitutional claim to the BIA. Id.

The Attorney General "may" cancel the removal of a nonpermanent resident alien who establishes: (1) he has been physically present in the United States for at least 10 years; (2) he has been a person of good moral character for that period; (3) he has not been convicted of certain criminal offenses; and (4) his removal would result in "exceptional and extremely unusual hardship" to his spouse, parent, or child, who is a United States citizen or lawful permanent resident. 8 U.S.C. § 1229b(b)(1). We lack jurisdiction to review any order or judgment concerning relief under the cancellation of removal provision of the INA. Id. § 1252(a)(2)(B)(i); see also Martinez v. U.S. Att'y Gen., 446 F.3d 1219, 1221 (11th Cir. 2006) (holding that "the BIA's § 1229b(b)(1)(D) exceptional and extremely unusual hardship determination is a discretionary decision not subject to review" (quotation omitted)). Notwithstanding that jurisdictional bar, we retain jurisdiction to review any petition that raises a constitutional claim or question of law. 8 U.S.C. § 1252(a)(2)(D).

However, aliens do not have a constitutionally protected liberty interest in purely discretionary forms of relief, and therefore, no substantive due process violation can arise from a deprivation of that relief. Scheer v. U.S. Att'y Gen., 513 F.3d 1244, 1253 (11th Cir. 2008). Moreover, statutory classifications of immigrants are subject to minimal scrutiny. Rivas v. U.S. Att'y Gen., 765 F.3d 1324, 1328-29

(11th Cir. 2014). In reviewing an equal protection challenge, the classification must be upheld if there is "any reasonably conceivable state of facts that could provide a rational basis for the classification." Resendiz-Alcaraz v. U.S. Att'y Gen., 383 F.3d 1262, 1271 (11th Cir. 2004) (quotation omitted). Under this standard, the alien has the burden of showing that the government regulation at issue is either arbitrary or unreasonable and is not rationally related to the government's purpose. Rivas, 765 F.3d at 1329.

In construing the INA, we have looked to the legislative history behind the Act and its amendments. See id. at 1270 (citing H.R. Conf. Rep. No. 104-828, at 224 (1996) (Conf. Rep.)). The House of Representatives articulated the following basis for creating the "exceptional and extremely unusual hardship" standard in 8 U.S.C. § 1229b(b):

> Section 240A(b)(1) replaces the relief now available under INA section 244(a) ("suspension of deportation"), but limits the categories of illegal aliens eligible for such relief and the circumstances under which it may be granted. The managers have deliberately changed the required showing of hardship from "extreme hardship" to "exceptional and extremely unusual hardship" to emphasize that the alien must provide evidence of harm to his spouse, parent, or child substantially beyond that which ordinarily would be expected to result from the alien's deportation. The "extreme hardship" standard has been weakened by recent administrative decisions . . . . [A] showing that an alien's United States citizen child would fare less well in the alien's country of nationality than in the United States does not establish "exceptional" or "extremely unusual" hardship and thus would not support a grant of relief under this provision. Our immigration law and policy clearly provide that an alien parent may not derive immigration benefits through his or her child who is a United States citizen. The availability

> in truly exceptional cases of relief under section 240A(b)(1) must not undermine this or other fundamental immigration enforcement policies.

H.R. Conf. Rep. 104-828, at 213-14 (1996) (Conf. Rep.). Nevertheless, "the Equal Protection Clause does not demand for purposes of rational-basis review that a legislature or governing decisionmaker actually articulate at any time the purpose or rationale supporting its classification." Nordlinger v. Hahn, 505 U.S. 1, 15 (1992).

Here, Mendez-Gutierrez challenges 1229b(b)(1)(D)'s "hardship requirement," which requires, as a condition of establishing eligibility for cancellation of removal, a showing that an alien's removal would result in "exceptional and extremely unusual hardship" to his spouse, parent, or child, who is a United States citizen or lawful permanent resident. Mendez-Gutierrez does not dispute the agency's finding that that his children would not face "exceptional and extremely unusual hardship" if he were deported, but instead argues that the hardship requirement violates the Constitution, claiming both due process and equal protection violations.[1] For starters, however, his substantive due process claim is

[1] Contrary to the government's claim, Mendez-Gutierrez did not abandon his arguments in this Court concerning the hardship requirement -- there was a discrete argument section in his brief that addressed 8 U.S.C. § 1229b(b)(1) and the BIA's application of the "substantially beyond" standard articulated in Matter of Monreal-Aguinaga, 23 I. & N. Dec. 56, 59-60 (BIA 2001). But because Mendez-Gutierrez failed to present to the BIA his constitutional challenges to Matter of Monreal-Aguinga's "substantially beyond" standard, we dismiss his procedural due process claim as unexhausted. We nevertheless will consider his substantive due process and equal protection claims since they are outside of the BIA's power to address and do not challenge the BIA's own procedure. See Bing, 881 F.3d at 867-68; Sundar, 328 F.3d at 1325. Moreover, because these claims raise genuine constitutional questions, we have jurisdiction to review them. 8 U.S.C. § 1252(a)(2)(D).

without merit. As we've held, aliens lack a constitutionally protected liberty interest in discretionary forms of relief, like cancellation of removal, and as a result, no substantive due process violation can arise from a deprivation of this form of discretionary relief. See Scheer, 513 F.3d at 1253; Martinez, 446 F.3d at 1221.

As for Mendez-Gutierrez's equal protection challenge to the hardship requirement -- that the hardship requirement violates the Equal Protection Clause because it unconstitutionally distinguishes between hardship suffered by a qualifying family member and hardship suffered by the alien himself -- it similarly lacks merit. Importantly, he has failed to show that there is no "reasonably conceivable state of facts that could provide a rational basis for" adopting the "exceptional and extremely unusual hardship" standard for cancellation of removal. Resendiz-Alcaraz, 383 F.3d at 1271. While we need not look to legislative history to ascertain whether there is a rational basis for a statute's classification, it is clear in this instance that there is a rational basis for why Congress sought to limit cancellation of removal to "truly exceptional cases." H.R. Conf. Rep. 104-828, at 213-14 (1996) (Conf. Rep.). As we've noted, there had been a "weakening" of the former "extreme hardship" standard, and, in the interest of conforming with the country's immigration policies, Congress adopted the heightened "exceptional and extremely unusual hardship" standard "to emphasize that the alien must provide evidence of harm to his spouse, parent, or child substantially beyond that which

ordinarily would be expected to result from the alien's deportation." Id. Because at least one rational basis exists for the hardship requirement, and because only minimal scrutiny is given to statutory classifications of immigrants, the hardship requirement does not violate the Equal Protection Clause. See Resendiz-Alcaraz, 383 F.3d at 1271; Rivas, 765 F.3d at 1328-29. Accordingly, Mendez-Gutierrez's constitutional challenges to the hardship requirement fail.

Finally, because Mendez-Gutierrez failed to satisfy one of the four required prongs of the cancellation of removal statute -- that his removal would result in "exceptional and extremely unusual hardship" to his spouse, parent, or child, who is a United States citizen or lawful permanent resident, 8 U.S.C. § 1229b(b)(1)(D) -- we need not address whether he satisfied the remaining portions of the statute. For this reason, we decline to review the BIA's finding that he was not continuously present in the United States. We therefore dismiss the part of Mendez-Gutierrez's petition raising a procedural due process claim and deny the remainder of the petition.

PETITION DISMISSED IN PART AND DENIED IN PART.