

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

DEC 19 2018

FOR THE NINTH CIRCUIT

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

MIGUEL PINEDA-FITZ,

Petitioner,

v.

MATTHEW G. WHITAKER, Acting
Attorney General,

Respondent.

No. 16-72732

Agency No. A200-832-206

MEMORANDUM*

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

Submitted December 17, 2018**

Before: WALLACE, SILVERMAN, and McKEOWN, Circuit Judges.

Miguel Pineda-Fitz, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' order dismissing his appeal from an immigration judge's decision denying cancellation of removal. Our jurisdiction is governed by 8 U.S.C. § 1252. We review for substantial evidence the agency's

* 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).

factual findings. *Najmabadi v. Holder*, 597 F.3d 983, 986 (9th Cir. 2010). We deny in part and dismiss in part the petition for review.

Substantial evidence supports the agency's good moral character determination, where Pineda-Fitz provided false testimony for the purpose of obtaining an immigration benefit. *See* 8 U.S.C. §§ 1101(f)(6) (anyone who has given false testimony for the purpose of obtaining immigration benefits cannot show good moral character), 1229b(b)(1)(B) (requiring good moral character for cancellation of removal); *Ramos v. INS*, 246 F.3d 1264, 1266 (9th Cir. 2001) (for a witness's false testimony to preclude a finding of good moral character, the witness must have had a subjective intent to deceive for the purpose of obtaining immigration benefits). To the extent Pineda-Fitz contends he voluntarily and timely recanted the false testimony, he did not exhaust this contention before the agency. *See Tijani v. Holder*, 628 F.3d 1071, 1080 (9th Cir. 2010).

We also lack jurisdiction to consider Pineda-Fitz's unexhausted contentions that the agency impermissibly admitted and relied on hearsay evidence in its false testimony finding, and thereby violated his right to a fundamentally fair hearing, *see id.*, and because he did not raise these issues in his appeal brief, the BIA was not required to discuss them, *see Zhang v. Ashcroft*, 388 F.3d 713, 721 (9th Cir. 2004).

PETITION FOR REVIEW DENIED in part; DISMISSED in part.