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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FRANCISCO MENDOZA-RODRIGUEZ, Petitioner, v. MERRICK B. GARLAND, Attorney General, Respondent.	No. 20-70790 Agency No. A209-158-658 MEMORANDUM[*]

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

Submitted November 17, 2022[**]
San Francisco, California

Before: S.R. THOMAS, BENNETT, and SUNG, Circuit Judges.

Francisco Mendoza-Rodriguez, a native and citizen of Mexico, petitions for review of a Board of Immigration Appeals ("BIA") decision affirming an immigration judge's ("IJ") decision denying his cancellation of removal. In the

[*] 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).

context of cancellation, we have jurisdiction to review questions of law, but we may not review the IJ or BIA's findings of fact. 8 U.S.C. §§ 1252(a)(2)(B)(i), (D). We review questions of law de novo. *Ridore v. Holder*, 696 F.3d 907, 911 (9th Cir. 2012). Because the parties are familiar with the factual and procedural history of the case, we need not recount it here. We deny the petition for review.

I

Whether the IJ applied the proper legal standard for "extreme and unusual hardship" is a question of law over which this Court has jurisdiction. *See Cabrera-Alvarez v. Gonzales*, 423 F.3d 1006, 1009 (9th Cir. 2005); 8 U.S.C. § 1252(a)(2)(D). However, contrary to Petitioner's argument, the IJ did apply the proper legal standard here. As required, the IJ considered the hardship to Petitioner's children individually, based on a variety of factors, and in the aggregate. *In re Monreal-Aguinaga*, 23 I. & N. Dec. 56, 63–64 (BIA 2001); *In re Andazola-Rivas,* 23 I. & N. Dec. 319, 323–24 (BIA 2002); *In re Gonzalez Recinas*, 23 I. & N. Dec. 467, 468–72 (BIA 2002). As to Petitioner's son, the IJ considered his health, age, living situation, caregivers, and sources of support. As to Petitioner's daughter, the IJ considered her caregivers and sources of support. And as to both children, the IJ noted that neither would be "taken out of the schools that they are presently attending, or taken away from their friends in Las Vegas, or

taken away from any doctors or medical attention that they are receiving." Therefore, when the IJ decided that, "in the aggregate[,] . . . the respondent has not established 'exceptional and extremely unusual hardship' to his qualifying relatives," the IJ applied the correct legal standard.

II

Whether the IJ applied the proper standard when it declined to exercise discretion in Petitioner's favor is a question of law which this Court may review. *See Figueroa v. Mukasey*, 543 F.3d 487, 495 (9th Cir. 2008), *impliedly overruled on other grounds in Abebe v. Mukasey*, 554 F.3d 1203 (9th Cir. 2009). Here, the IJ applied the proper standard. The IJ considered both the positive and negative factors in Petitioner's case, and the IJ found that, on balance, the negative factors outweighed the positive factors. *Vilchez v. Holder*, 682 F.3d 1195, 1198, 1200–01 (9th Cir. 2012).

III

Finally, any deficiencies in Petitioner's Notice to Appear ("NTA") did not strip the IJ of jurisdiction. *See United States v. Bastide-Hernandez*, 39 F.4th 1187, 1191 (9th Cir. 2022) (en banc) (failure to include the time and location of removal proceedings in an NTA does not divest the IJ of jurisdiction).

PETITION DENIED.