NOT FOR PUBLICATION

FILED

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

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

BENITO SEGUNDO-GONZALEZ,

Petitioner,

v.

MERRICK B. GARLAND, Attorney General,

Respondent.

No. 20-72068

Agency No. A095-784-551

MEMORANDUM*

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

Submitted November 17, 2022**
San Francisco, California

Before: LINN,*** RAWLINSON, and HURWITZ, Circuit Judges.

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* 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).

*** The Honorable Richard Linn, United States Circuit Judge for the U.S. Court of Appeals for the Federal Circuit, sitting by designation.

Benito Segundo-Gonzales, a native of Mexico, petitions for review of the decision of the Board of Immigration Appeals ("Board") denying withholding of removal. Segundo-Gonzales challenges the jurisdiction of the immigration court to commence removal proceedings by using a notice to appear that lacked certain information under 8 U.S.C. § 1229(a)(1)(G)(i). He also argues that he was deprived of due process by the immigration judge's failure to adequately develop the record and to notify him of the availability of pre-conclusion voluntary departure. He further contends that the Board abused its discretion by failing to consider his arguments for withholding of removal on a case-by-case basis. We dismiss the petition in part and deny it in part.

1. We lack authority to review mere procedural errors in the notice to appear that have not been administratively exhausted. *See Rashtabadi v. I.N.S.*, 23 F.3d 1562, 1567 (9th Cir. 1994) ("Failure to raise an issue in an appeal to the BIA constitutes a failure to exhaust remedies with respect to that question and deprives this court of jurisdiction to hear the matter." (quoting *Vargas v. U.S. Dep't of Immigr. & Naturalization*, 831 F.2d 906, 907–08 (9th Cir. 1987))). The deficiency in the notice to appear here is "mere procedural error" that may be cured by the agency and is not a due process challenge, as Segundo-Gonzalez does not claim he was not given actual notice of the time and place of his hearing or that he had insufficient time to

prepare. *See Barron v. Ashcroft*, 358 F.3d 674, 678 (9th Cir. 2004).[1]

2. Segundo-Gonzales has not shown a due process violation from any failure to inform him of the availability of pre-hearing voluntary departure because he was awarded voluntary departure after the hearing.

3. Segundo-Gonzales's claim about the purported failure to adequately develop the record concerning the nature of his particular social group fails because he cannot show that "the proceeding may have been affected by the alleged violation." *See Cinapian v. Holder*, 567 F.3d 1067, 1074 (9th Cir. 2009) (quotation omitted). The immigration judge acknowledged that familial relationship could be the basis of a cognizable social group but denied withholding because "Respondent conceded that there was nothing particular about this membership in his family that would make him specifically a target." No development of the record about the characteristics of the social group itself could have changed this concession or the finding of a lack of nexus.

4. The Board did not violate Segundo-Gonzales's due process by upholding the immigration judge's decision with respect to the Convention Against Torture ("CAT"). Segundo-Gonzales received all the procedural safeguards required,

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[1] In any event, the contention that the immigration court lacked jurisdiction is foreclosed by our precedent. *See Karingithi v. Whitaker*, 913 F.3d 1158, 1159 (9th Cir. 2019); *Aguilar Fermin v. Barr*, 958 F.3d 887, 893 (9th Cir. 2020).

including: a hearing before the immigration judge, the immigration judge's opinion with explanation, an opportunity to appeal to the Board, and the Board's decision. *See Falcon Carriche v. Ashcroft*, 350 F.3d 845, 851 (9th Cir. 2003).

5. The Board and the immigration judge did not err in denying withholding of removal. Segundo-Gonzales's concession with respect to the lack of nexus between membership in his family and the likelihood of future persecution is fatal to his withholding claim. Moreover, he forfeited the argument for withholding based on membership in the social group of repatriated Mexicans by not raising it to the immigration court.

PETITION DISMISSED IN PART AND DENIED IN PART.