

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

DEC 20 2021

FOR THE NINTH CIRCUIT

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

DAVID LLAMAS-CONTRERAS,

No. 20-72250

Petitioner,

Agency No. A205-317-698

v.

MEMORANDUM*

MERRICK B. GARLAND, Attorney
General,

Respondent.

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

Submitted December 14, 2021**

Before: WALLACE, CLIFTON, and HURWITZ, Circuit Judges.

David Llamas-Contreras, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' ("BIA") order dismissing his appeal from an immigration judge's ("IJ") decision denying his applications for cancellation of removal, withholding of removal, and relief under the Convention Against Torture

* 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).

(“CAT”). Our jurisdiction is governed by 8 U.S.C. § 1252. We review factual findings for substantial evidence. *Conde Quevedo v. Barr*, 947 F.3d 1238, 1241 (9th Cir. 2020). We review de novo questions of law. *Bhattarai v. Lynch*, 835 F.3d 1037, 1042 (9th Cir. 2016). We dismiss in part and deny in part the petition for review.

We lack jurisdiction to review the BIA’s discretionary determination that Llamas-Contreras did not show exceptional and extremely unusual hardship to a qualifying relative for purposes of cancellation of removal. *See* 8 U.S.C. § 1252(a)(2)(B)(i); *Martinez-Rosas v. Gonzales*, 424 F.3d 926, 930 (9th Cir. 2005). The petition does not raise a colorable legal or constitutional claim over which we retain jurisdiction. *See* 8 U.S.C. § 1252(a)(2)(D); *Martinez-Rosas*, 424 F.3d at 930.

The BIA did not err in its determination that Llamas-Contreras waived his withholding of removal claim, *see Alanniz v. Barr*, 924 F.3d 1061, 1068-69 (9th Cir. 2019) (no error in BIA’s waiver determination), and we lack jurisdiction to consider any contention as to the merits of his withholding of removal claim because Llamas-Contreras did not raise it to the BIA, *see Barron v. Ashcroft*, 358 F.3d 674, 677-78 (9th Cir. 2004) (court lacks jurisdiction to review claims not presented to the agency). Thus, we deny the petition for review as to Llamas-Contreras’s withholding of removal claim.

Llamas-Contreras does not challenge the BIA's determination that he waived any challenge to the IJ's finding that he failed to demonstrate that any torture he fears in Mexico would be inflicted by government officials or private actors with government acquiescence, which is dispositive of Llamas-Contreras's CAT claim. *See Martinez-Serrano v. INS*, 94 F.3d 1256, 1259-60 (9th Cir. 1996) (issues not specifically raised and argued in a party's opening brief are waived). We do not reach Llamas-Contreras's contentions regarding the merits of his CAT claim because the BIA did not decide the issue. *See Andia v. Ashcroft*, 359 F.3d 1181, 1184 (9th Cir. 2004) ("In reviewing the decision of the BIA, we consider only the grounds relied upon by that agency."). Thus, we deny the petition for review as to Llamas-Contreras's CAT claim.

The temporary stay of removal remains in place until issuance of the mandate.

PETITION FOR REVIEW DISMISSED in part; DENIED in part.