

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

NOV 22 2022

FOR THE NINTH CIRCUIT

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

JOSE HUBERTO MOLINA HERRERA,

No. 21-17052

Plaintiff-Appellant,

D.C. No. 3:21-cv-02369-JSC

v.

MEMORANDUM*

MERRICK B. GARLAND, Attorney
General; et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of California
Jacqueline Scott Corley, Magistrate Judge, Presiding

Submitted November 18, 2022**
San Francisco, California

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

* 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.

Jose Herrera appeals the district court's dismissal of his action under the Administrative Procedure Act ("APA") challenging the denial by the U.S. Citizenship and Immigration Services ("USCIS") of an application for adjustment of status. The district court dismissed the action for lack of jurisdiction. We affirm.

Herrera asserts that the USCIS "did not meaningfully apply and balance the overwhelming positive equities in this case and instead focused on the single issue of the distant juvenile matter." However, the weight assigned by the USCIS to various factors in evaluating applications for adjustment of status is unreviewable under the APA because it is a discretionary decision. 5 U.S.C. § 701(a)(2); 8 U.S.C. § 1252(a)(2)(B)(ii). It is also unreviewable under the Immigration and Nationality Act as a judgment "regarding the granting of relief under . . . 1255." 8 U.S.C. § 1252(a)(2)(B)(i). To the extent that 8 U.S.C. § 1252(a)(2)(D) provides jurisdiction to review constitutional or legal claims, *see Hassan v. Chertoff*, 593 F.3d 785, 789 (9th Cir. 2010), it is of no aid to Herrera because he merely claims that the agency should have weighed the evidence before it differently, *see Bazua-Cota v. Gonzales*, 466 F.3d 747, 749 (9th Cir. 2006) (holding that the failure "to properly weigh the equities and hardship" in denying an application for adjustment of status is not a due process violation) and because this case is not before us on "a petition for review" but on an appeal from the district court.

AFFIRMED