

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

DEC 12 2022

FOR THE NINTH CIRCUIT

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

MARTIN GONZALEZ-GARCIA,

Petitioner,

v.

MERRICK B. GARLAND, Attorney
General,

Respondent.

No. 21-70047

Agency No. A205-648-285

MEMORANDUM*

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

Submitted December 8, 2022**
Seattle, Washington

Before: O'SCANNLAIN, McKEOWN, and MILLER, 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).

Martin Gonzalez-Garcia petitions for review of the Board of Immigration Appeals' ("BIA's") dismissal of his appeal from the decisions of the Immigration Judge ("IJ") denying his application for cancellation of removal and his request for administrative closure. As the facts are known to the parties, we repeat them only as necessary to explain our decision.

I

Gonzalez-Garcia argues that the agency violated his due process rights by ignoring relevant evidence of "exceptional and extremely unusual hardship" which would result to qualifying relatives if he were removed. 8 U.S.C. § 1229b(b)(1). But this court lacks jurisdiction to review denials of cancellation of removal except for questions of law and colorable constitutional claims. *See* 8 U.S.C. § 1252(a)(2); *Mendez-Castro v. Mukasey*, 552 F.3d 975, 978 (9th Cir. 2009). While Gonzalez-Garcia's claim is constitutional, it is not colorable. He makes only the conclusory allegation that the IJ failed to consider the hardship his children would face if he were to relocate to Mexico, when the record shows that the IJ considered that hardship and found it not to rise to the level of being exceptional and extremely unusual. Gonzalez-Garcia might disagree with the IJ's finding, but this court lacks jurisdiction over "traditional abuse of discretion challenges recast as alleged due process violations." *Martinez-Rosas v. Gonzales*, 424 F.3d 926, 930 (9th Cir. 2005).

II

Gonzalez-Garcia also argues that the agency erred by denying administrative closure based solely on the government's opposition to closure. This court reviews denials of administrative closure for abuse of discretion. *Marquez-Reyes v. Garland*, 36 F.4th 1195, 1208 (9th Cir. 2022). When the BIA affirms the IJ's decision and adds additional reasons, we review both decisions. *Nuru v. Gonzales*, 404 F.3d 1207, 1215 (9th Cir. 2005). Here, the BIA endorsed the IJ's application of the multifactor test laid out in *Matter of Avetisyan*, 25 I&N Dec. 688, 696 (BIA 2012). The IJ found two factors dispositive: (2) the government's basis for opposing closure, and (4) the anticipated duration of the closure. The IJ's application of *Avetisyan* was not unreasonable, and it did not undermine the IJ's neutrality for him to consider the government's opposition. The BIA's endorsement of the IJ's application of *Avetisyan* was therefore not an abuse of discretion. Although the BIA also cited a since-overruled agency precedent stating that the IJ had no authority to grant administrative closure absent government consent, *see Matter of Castro-Tum*, 27 I&N Dec. 271 (A.G. 2018), *overruled by Matter of Cruz-Valdez*, 28 I&N Dec. 326 (A.G. 2021), this citation did not affect the outcome, since the *Avetisyan* analysis on its own was sufficient to affirm the IJ.

* * *

The petition for review is **DISMISSED IN PART, DENIED IN PART.**