

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

DEC 7 2023

FOR THE NINTH CIRCUIT

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

EMILIANO GUERRERO LOZANO,

Petitioner,

v.

MERRICK B. GARLAND, Attorney  
General,

Respondent.

No. 22-1505

Agency No.  
A216-434-428

MEMORANDUM\*

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

Submitted December 5, 2023\*\*  
San Francisco, California

Before: S.R. THOMAS and BRESS, Circuit Judges, and EZRA, District Judge.\*\*\*

Emiliano Guerrero Lozano (Lozano), a native and citizen of Mexico, petitions for review of a decision by the Board of Immigration Appeals (BIA) dismissing his

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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 David A. Ezra, United States District Judge for the District of Hawaii, sitting by designation.

appeal from an Immigration Judge (IJ) order denying his applications for cancellation of removal and protection under the Convention Against Torture (CAT). “Where, as here, the BIA agrees with the IJ’s reasoning, we review both decisions.” *Garcia-Martinez v. Sessions*, 886 F.3d 1291, 1293 (9th Cir. 2018). We dismiss the petition in part and deny it in part.

1. We lack jurisdiction over Lozano’s challenge to the BIA’s denial of cancellation of removal. *See* 8 U.S.C. § 1252(a)(2)(B)(i) (specifying that we lack jurisdiction over discretionary decisions regarding the granting of relief under § 1229b). Lozano alleges that the agency erred by determining that he lacks good moral character based on false testimony offered at his merits hearing. But this character finding, made under the catch-all provision of 8 U.S.C. § 1101(f), is a discretionary determination which we lack jurisdiction to review. *See Lopez-Castellanos v. Gonzales*, 437 F.3d 848, 854 (9th Cir. 2006).

Nor does Lozano advance any colorable legal or constitutional claim over which we would have jurisdiction under 8 U.S.C. § 1252(a)(2)(D). Lozano’s argument that the IJ placed too much weight on the false statements made at his merits hearing “is nothing more than an argument that the IJ abused his discretion” when concluding that Lozano lacks good moral character. *Martinez-Rosas v. Gonzales*, 424 F.3d 926, 930 (9th Cir. 2005). That argument does not advance a colorable legal or constitutional claim.

2. We review adverse credibility determinations and the denial of CAT protection for substantial evidence and must uphold the agency’s decision “unless the evidence compels a contrary conclusion.” *Duran-Rodriguez v. Barr*, 918 F.3d 1025, 1028 (9th Cir. 2019); *see also Shrestha v. Holder*, 590 F.3d 1034, 1039 (9th Cir. 2010). The agency denied CAT relief on two grounds, both of which are supported by substantial evidence.

*First*, substantial evidence supports the IJ’s adverse credibility determination. When making a credibility assessment, an IJ must consider “the totality of the circumstances” and “all relevant factors.” 8 U.S.C. § 1158(b)(1)(B)(iii); *see also* 8 USC § 1229a(c)(4)(C). The IJ may consider inconsistencies, inaccuracies, and falsehoods in the testimony and record “without regard to whether” they “go[] to the heart of the applicant’s claim.” *Id.* “There is no bright-line rule under which some number of inconsistencies requires sustaining or rejecting an adverse credibility determination . . . .” *Alam v. Garland*, 11 F.4th 1133, 1137 (9th Cir. 2021) (en banc). Instead, “our review will always require assessing the totality of the circumstances.” *Id.*

Here, the IJ concluded that Lozano gave false testimony when he repeatedly stated that he had left the United States only one time since his initial entry. Although Lozano claimed he had simply forgotten about his second departure, the IJ was not required to accept this explanation, especially where Lozano had

remained outside of the United States for a year. Lozano’s false testimony offered a legitimate basis for discrediting his narrative. *See Singh v. Holder*, 643 F.3d 1178, 1181 (9th Cir. 2011) (noting that an applicant “who lies to immigration authorities casts doubt on his credibility and the rest of his story”).

*Second*, even assuming Lozano testified credibly, substantial evidence supports the BIA’s alternative determination that Lozano failed to show he was entitled to CAT protection. An applicant for CAT relief bears the burden of establishing that he “will more likely than not be tortured with the consent or acquiescence of a public official if removed to h[is] native country.” *Xochihua-Jaimes v. Barr*, 962 F.3d 1175, 1183 (9th Cir. 2020).

The record supports the BIA’s conclusion that Lozano has not met that burden. The only past harm Lozano alleges in Mexico is a beating by a neighbor that took place when Lozano was a child. Although Lozano’s father was killed by a cartel member, Lozano’s family has remained in Mexico without further harm for the past approximately 40 years. Nor is the “generalized evidence of violence and crime in Mexico” that Lozano proffers sufficient to establish eligibility for relief under the CAT. *Delgado-Ortiz v. Holder*, 600 F.3d 1148, 1152 (9th Cir. 2010).

**PETITION DISMISSED IN PART AND DENIED IN PART.**