NOT FOR PUBLICATION

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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

PAOLA SULAINE MARQUEZ-MUNOZ, Petitioner, v. MERRICK B. GARLAND, Attorney General, Respondent.	No. 22-1665 Agency No. A205-931-035 MEMORANDUM[*]

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

Submitted November 16, 2023[**]
Pasadena, California

Before: RAWLINSON, HURWITZ, and OWENS, Circuit Judges.

Paola Sulaine Marquez-Munoz, a native and citizen of Mexico, petitions for review of a Board of Immigration Appeals ("BIA") decision dismissing her appeal from an order by an immigration judge ("IJ") finding her removable and granting

[*] 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).

voluntary departure. Exercising jurisdiction under 8 U.S.C. § 1252, we deny the petition.

1. Marquez failed to exhaust the argument that she was not removable. *See Bare v. Barr*, 975 F.3d 952, 960 (9th Cir. 2020) (a petitioner must "put the BIA on notice of what was being challenged."). She challenged removability before the IJ, but her BIA brief only argued that she was eligible for cancellation of removal under the Violence Against Women Act ("VAWA"), 8 U.S.C. § 1229b(b)(2)(A), or eligible for a U visa. The government identified this failure to exhaust in its answering brief in this Court, *see Santos-Zacaria v. Garland*, 598 U.S. 411, 423 (2023) (exhaustion "is subject to waiver and forfeiture"), but Marquez filed no reply brief and has offered no excuse for her failure to exhaust.

2. Even assuming exhaustion, substantial evidence supports the IJ's determination that Marquez is removable. *See Cortez-Pineda v. Holder*, 610 F.3d 1118, 1123–24 (9th Cir. 2010). Her account of her 2006 entry to the United States was internally inconsistent, and even when given multiple opportunities to clarify the time, date, and location of the entry, she did not do so. The IJ thus reasonably found that she had not carried her burden of proof to establish legal entry.

3. The BIA did not err in declining to entertain Marquez's arguments, raised for the first time on appeal to that agency, that she was eligible for a U visa or VAWA relief. The BIA "does not *per se* err when it concludes that arguments raised

for the first time on appeal do not have to be entertained." *Honcharov v. Barr*, 924 F.3d 1293, 1297 (9th Cir. 2019). Nor does the BIA err in declining remand if the noncitizen failed "to establish a prima facie case for the relief sought," *Najmabadi v. Holder*, 597 F.3d 983, 986 (9th Cir. 2010) (cleaned up), which requires "a reasonable likelihood that the petitioner would prevail on the merits if the motion to [remand] were granted," *Fonseca-Fonseca v. Garland*, 76 F.4th 1176, 1179 (9th Cir. 2023). Before the BIA, Marquez stated she was "a VAWA applicant" and remained in the U.S. due to "extreme cruelty or battery," but she offered no details that would allow the agency to determine her likelihood of success on the merits of any application for cancellation.

4. The BIA also did not err in declining to reinstate voluntary departure. To retain eligibility for voluntary departure after appealing to the BIA, a noncitizen must "submit sufficient proof of having posted the required voluntary departure bond" within thirty days of appealing to the BIA. 8 C.F.R. § 1240.26(c)(3)(ii). Marquez submitted no such proof.

PETITION FOR REVIEW DENIED.