NOT FOR PUBLICATION

FILED

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

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

OSCAR JUAN DELGADO-OLMOS, Petitioner, v. MERRICK B. GARLAND, Attorney General, Respondent.	No. 22-1697 Agency No. A074-826-503 MEMORANDUM[*]

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

Submitted March 27, 2024[**]
Pasadena, California

Before: RAWLINSON, LEE, and BRESS, Circuit Judges.

Oscar Juan Delgado-Olmos, a native and citizen of Mexico, petitions for review of a Board of Immigration Appeals (BIA) decision dismissing his appeal from an Immigration Judge (IJ) order denying his request for an adjustment of status.

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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).

We have jurisdiction under 8 U.S.C. § 1252. We deny the petition.

Delgado-Olmos does not challenge the grounds upon which the IJ and BIA concluded he was ineligible for adjustment of status. In his petition for review, Delgado-Olmos instead contends that he is not subject to the permanent bar on admissibility, 8 U.S.C. § 1182(a)(9)(C)(i), because he qualifies for an exception under 8 U.S.C. § 1182(a)(9)(C)(ii). Specifically, Delgado-Olmos maintains that he has legally been present outside the United States for the required ten years because his parole into the United States in 2013 did not affect his legal status. Under Delgado-Olmos's theory, his physical presence in this country during his parole is irrelevant for the purposes of time accrual under § 1182(a)(9)(C)(ii).

Delgado-Olmos concedes that he did not raise this theory before either the IJ or the BIA. Under 8 U.S.C. § 1252(d)(1), an alien must "exhaust[] all administrative remedies available to the alien as of right." Although this provision is not jurisdictional, it is a mandatory claims-processing rule that we must enforce if the government properly raises it. *See Santos-Zacaria v. Garland*, 598 U.S. 411, 417–19 (2023); *Umana-Escobar v. Garland*, 69 F.4th 544, 550 (9th Cir. 2023), *as amended*.

To exhaust his argument, Delgado-Olmos must have raised the issue in such a way that was "sufficient to put the BIA on notice of what was being challenged." *Bare v. Barr*, 975 F.3d 952, 960 (9th Cir. 2020) (citation omitted). "What matters is

that the BIA was sufficiently on notice so that it 'had an opportunity to pass on this issue.'" *Id.* (quoting *Zhang v. Ashcroft*, 388 F.3d 713, 721 (9th Cir. 2004) (per curiam)). In this case, and although the IJ and BIA stated that the exception in § 1182(a)(9)(C)(ii) did not apply, they did not consider Delgado-Olmos's current argument because he did not raise it before the agency. Because Delgado-Olmos did not provide the BIA with an opportunity to pass on his theory, the mandatory claims-processing rule of 8 U.S.C. § 1252(d)(1) applies. We thus do not consider his new theory further.

Our decision is without prejudice to Delgado-Olmos seeking to raise his new theory before the BIA in a proper motion to reopen or through another appropriate mechanism.

PETITION DENIED.[1]

[1] We deny Delgado-Olmos's motion to stay removal. Dkt. 3. The temporary stay of removal shall remain in place until the mandate issues.