FILED

APR 11 2024

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MARCO GUERRERO-RUIZ, Petitioner, v. MERRICK B. GARLAND, Attorney General, Respondent.	No. 22-628 Agency No. A208-303-424 MEMORANDUM*

MARCO GUERRERO-RUIZ, Petitioner, v. MERRICK B. GARLAND, Attorney General, Respondent.	No. 22-2030 Agency No. A208-303-424

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

MARCO GUERRERO-RUIZ, Petitioner, v. MERRICK B. GARLAND, Attorney General, Respondent.	No. 23-768 Agency No. A208-303-424

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

Submitted April 9, 2024[**]
Pasadena, California

Before: SILER,[***] BEA, and IKUTA, Circuit Judges.

Marco Guerrero-Ruiz, a native and citizen of Mexico, seeks review of an order of the Board of Immigration Appeals (BIA) dismissing his appeal of a final order of removal issued by an Immigration Judge (IJ), as well as the BIA's orders denying his motions to dismiss and reopen. We have jurisdiction under 8 U.S.C. § 1252(a), and we deny the petitions for review.

[**] The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

[***] The Honorable Eugene E. Siler, United States Circuit Judge for the U.S. Court of Appeals for the Sixth Circuit, sitting by designation.

Guerrero-Ruiz's brief before the BIA failed to challenge the IJ's determinations that his proposed particular social group was not cognizable and that he was not a member of that particular social group. Therefore, the BIA did not err in determining that Guerrero-Ruiz waived those determinations. *See Matter of R-A-M-*, 25 I. & N. Dec. 657, 658 n.2 (BIA 2012) (respondent waived issue by failing to "appeal the [IJ's] decision regarding [a particular] aspect of his claim"); *Honcharov v. Barr*, 924 F.3d 1293, 1296 (9th Cir. 2019) ("The [BIA] also has the authority to prescribe procedural rules that govern the proceedings before it, and procedural default rules are consistent with this authority."). Nor did the BIA err in declining to consider Guerrero-Ruiz's proposed particular social group, which was different from the one argued before the IJ. *See Honcharov*, 924 F.3d at 1297 ("[T]he [BIA] did not err when it declined to consider [petitioner's] proposed particular social groups that were raised for the first time on appeal."). By not properly raising these arguments before the BIA, Guerrero-Ruiz also failed to exhaust them. *See* 8 U.S.C. § 1252(d)(1); *Santos-Zacaria v. Garland*, 598 U.S. 411, 419 (2023) (holding that § 1252(d)(1) is a non-jurisdictional claim-processing rule); *Abebe v. Mukasey*, 554 F.3d 1203, 1208 (9th Cir. 2009) (a petitioner is "deemed to have exhausted only those issues he raised and argued in his brief before the BIA"). We therefore do not consider these arguments. *See Umana-*

Escobar v. Garland, 69 F.4th 544, 550 (9th Cir. 2023) (denying petition on failure-to-exhaust grounds). Because the IJ's decisions regarding Guerrero-Ruiz's proposed particular social group are dispositive of his asylum and withholding of removal applications, the BIA did not err in dismissing Guerrero-Ruiz's appeal as to these applications.

As to Guerrero-Ruiz's claim for relief under the Convention Against Torture (CAT), the BIA did not err in determining that he waived any challenge to the IJ's "finding that he has not established he more likely than not will be tortured in Mexico." The IJ's determination of this issue disposes of Guerrero-Ruiz's CAT claim. Again, by not challenging that determination in his brief before the BIA, Guerrero-Ruiz failed to exhaust it. *See* 8 U.S.C. § 1252(d)(1); *Abebe*, 554 F.3d at 1208. We therefore do not consider this argument, and conclude the BIA did not err in dismissing Guerrero-Ruiz's appeal as to CAT relief. *See Umana-Escobar*, 69 F.4th at 550.

The BIA did not err in rejecting Guerrero-Ruiz's argument that the IJ improperly denied his request to withdraw his pro se pleadings which conceded the factual allegations in the Notice to Appear. The IJ properly advised Guerrero-Ruiz of his rights, and an IJ may "accept admissions from an unrepresented alien except in circumstances not pertinent here." *Pagayon v. Holder*, 675 F.3d 1182, 1190

(9th Cir. 2011); 8 C.F.R. § 1240.10(c). In any event, Guerrero-Ruiz has not shown any prejudice, given that at a later hearing his attorney conceded the allegations in the Notice to Appear and Guerrero-Ruiz has not identified any evidence contradicting the allegations in the Notice to Appear. *See Santiago-Rodriguez v. Holder*, 657 F.3d 820, 829 (9th Cir. 2011) ("Typically, an attorney's in-court admission of the [Notice to Appear's] allegations made on behalf of his alien client is treated no differently" than the alien's admission).

Guerrero-Ruiz's challenge to the BIA's determination that the IJ did not err in denying Guerrero-Ruiz's motion to consolidate his case with his family members' cases also fails. An IJ may "take any . . . action consistent with applicable law and regulations as may be appropriate." 8 C.F.R.§ 1240.1(a)(1)(iv). Guerrero-Ruiz does not cite any authority calling the agency's determination here into question. Moreover, given that Guerrero-Ruiz never submitted any evidence from his family members' cases or identified any such evidence in his brief, Guerrero-Ruiz has not shown that he was prejudiced by the denial of his motion to consolidate. *See Zamorano v. Garland*, 2 F.4th 1213, 1228 (9th Cir. 2021) ("We apply 'traditional administrative law principles' in reviewing immigration agency decisions," including the rule of prejudicial error. (quoting *Garland v. Dai*, 141 S. Ct. 1669, 1679 (2021))).

The BIA did not err in denying Guerrero-Ruiz's July 2022 motion to dismiss his case without prejudice. Guerrero-Ruiz's characterization of the government's position as not opposing his motion was inaccurate, as the government indicated only that if Guerrero-Ruiz was "seeking a motion to reopen and dismissal proceedings in this case, [he could] make a request for such a motion and it would be reviewed."

The BIA also did not abuse its discretion in denying Guerrero-Ruiz's untimely January 2023 motion to reopen and dismiss without prejudice. Guerrero-Ruiz's argument that the BIA erred in holding that no extraordinary circumstances supported equitable tolling is forfeited, because he failed to raise it in his opening brief. *See Velasquez-Gaspar v. Barr*, 976 F.3d 1062, 1065 (9th Cir. 2020). To the extent he argues that the BIA erred because the government did not oppose the motion to reopen and dismiss without prejudice, it fails for the same reason as above: the government did not state that it was unopposed to those motions.

PETITIONS DENIED.