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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>OSCAR OCHOA-AMAYA,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER Jr., Attorney General,</p> <p>Respondent.</p>
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No. 04-76747

Agency No. A026-342-905

MEMORANDUM\*

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

Submitted June 16, 2009\*\*

Before: PAEZ, TALLMAN, and N.R. SMITH, Circuit Judges.

Oscar Ochoa-Amaya, a native and citizen of El Salvador, petitions for review of the Board of Immigration Appeals’ order summarily affirming an immigration judge’s (“IJ”) deportation order. Our jurisdiction is governed by 8

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\* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

\*\* The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

U.S.C. § 1252. We review for substantial evidence the agency’s factual findings, *Zehatye v. Gonzales*, 453 F.3d 1182, 1184-85 (9th Cir. 2006), and review de novo questions of law, *Husyev v. Mukasey*, 528 F.3d 1172, 1177 (9th Cir. 2008). We dismiss in part and deny in part the petition for review.

The IJ did not err in concluding that Ochoa-Amaya was ineligible for both special-rule cancellation of removal under section 203 of the Nicaraguan Adjustment and Central American Relief Act of 1997 (“NACARA”) and suspension of deportation under former 8 U.S.C. § 1254. *See Ortiz v. INS*, 179 F.3d 1148, 1154 n. 7 (9th Cir.1999) (stating that relief under NACARA is available only to those who have not been convicted of an aggravated felony); *Ram v. INS*, 243 F.3d 510, 518 (9th Cir. 2001) (under the stop-time rule, an alien’s period of continuous physical presence ends upon the service of a order to show cause). We lack jurisdiction to review the IJ’s determination that Ochoa-Amaya’s 1981 conviction constitutes an aggravated felony for purposes of NACARA § 203 because Ochoa-Amaya failed to exhaust this contention before the agency. *See Barron v. Ashcroft*, 358 F.3d 674, 677 (9th Cir. 2004).

We reject Ochoa-Amaya’s contentions regarding his allegedly defective criminal conviction, as we cannot collaterally revisit the circumstances of the conviction. *See Ortega de Robles v. INS*, 58 F.3d 1355, 1358 (9th Cir. 1995).

Substantial evidence supports the IJ's denial of asylum on the grounds that the single incident of physical harm Ochoa-Amaya experienced did not rise to the level of past persecution and Ochoa-Amaya failed to demonstrate that his fear of returning to El Salvador is objectively reasonable. *See Gu v. Gonzales*, 454 F.3d 1014, 1020-22 (9th Cir. 2006).

Because Ochoa-Amaya did not establish eligibility for asylum, it necessarily follows that he did not satisfy the more stringent standard for withholding of removal. *See Prasad v. INS*, 47 F.3d 336, 340 (9th Cir. 1995).

Finally, substantial evidence supports the IJ's denial of CAT relief because Ochoa-Amaya failed to establish that it is more likely than not he would be tortured if returned to El Salvador. *See Malhi v. INS*, 336 F.3d 989, 993 (9th Cir. 2003).

Ochoa-Amaya's remaining contentions lack merit.

**PETITION FOR REVIEW DISMISSED in part; DENIED in part.**