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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>MANUEL BALBUENA RIVERA, a.k.a. Manuel Rivera-Balbuena,</p> <p style="text-align: center;">Petitioner,</p> <p style="text-align: center;">v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p style="text-align: center;">Respondent.</p>

No. 06-73815

Agency No. A091-878-213

MEMORANDUM*

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

Submitted June 29, 2010**

Before: ALARCÓN, LEAVY, and GRABER, Circuit Judges.

Manuel Balbuena Rivera, a native and citizen of Mexico, petitions pro se for review of the Board of Immigration Appeals’ (“BIA”) order summarily affirming an immigration judge’s (“IJ”) decision denying his application for lawful permanent resident cancellation of removal. Our jurisdiction is governed by

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

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

8 U.S.C. § 1252. We review de novo questions of law, *Altamirano v. Gonzales*, 427 F.3d 586, 591 (9th Cir. 2005), and we dismiss in part and deny in part the petition for review.

We lack jurisdiction to review Balbuena Rivera's contention that the IJ erred in finding him removable because he failed to raise that issue before the agency. *See Barron v. Ashcroft*, 358 F.3d 674, 678 (9th Cir. 2004) (exhaustion is generally mandatory and jurisdictional); *see also Abebe v. Mukasey*, 554 F.3d 1203, 1207-08 (9th Cir. 2009) (en banc) (issues raised in the notice of appeal but not argued in the brief to BIA are not exhausted).

We also lack jurisdiction to review the IJ's discretionary denial of Balbuena Rivera's application for cancellation of removal. *See* 8 U.S.C. § 1252(a)(2)(B)(i).

The IJ did not err by considering evidence outside the record of conviction to determine whether discretion should be favorably exercised. *See Tokatly v. Ashcroft*, 371 F.3d 613, 621 (9th Cir. 2004).

PETITION FOR REVIEW DISMISSED in part; DENIED in part.