

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

MAR 11 2013

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

MIGUEL SANTILLAN-AVILEZ,

Petitioner,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 10-70296

Agency No. A095-718-439

MEMORANDUM*

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

Submitted February 15, 2013**
Pasadena, California

Before: BERZON and WATFORD, Circuit Judges, and RAKOFF, Senior District
Judge.***

Miguel Santillan-Avilez contends the Board of Immigration Appeals (BIA)
and the immigration judge (IJ) should have applied the modified categorical

* 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).

*** The Honorable Jed S. Rakoff, Senior United States District Judge for
the Southern District of New York, sitting by designation.

analysis to determine whether Santillan's California conviction for possession of a controlled substance rendered him ineligible for cancellation of removal. But Santillan never put the BIA on notice of this issue, because he never mentioned it in his notice of appeal or his brief to the BIA. *See Figueroa v. Mukasey*, 543 F.3d 487, 492 (9th Cir. 2008). Nor did the BIA review and discuss the issue in its decision affirming the IJ's order. Accordingly, Santillan's failure to exhaust his administrative remedies deprives us of subject-matter jurisdiction. *See* 8 U.S.C. § 1252(d)(1); *Barron v. Ashcroft*, 358 F.3d 674, 678 (9th Cir. 2004).

PETITION DISMISSED.