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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FRANK CLIFORD MORETTI MOROTE,

Petitioner,

v.

ERIC H. HOLDER, JR., Attorney General,

Respondent.

No. 11-73593

Agency No. A073-753-835

MEMORANDUM AND ORDER*

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

Argued and Submitted August 28, 2014
Seattle, Washington

Before: HAWKINS, GRABER, and GOULD, Circuit Judges.

Petitioner Frank Clifford Moretti Morote (“Moretti Morote”) seeks review of the Board of Immigration Appeals’ (“BIA”) order denying his request for deferral of removal under the Convention Against Torture (“CAT”). Moretti Morote also contends the BIA failed to address his claim of ineffective assistance of counsel. We deny his petition for review.

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

Substantial evidence supports the BIA's determination that Moretti Morote did not bear his burden of establishing eligibility for CAT protection. Although some small factions of the Sendero Luminoso continue to exist in Peru (now largely as narcotics traffickers in remote areas), the evidence does not compel the conclusion that, after nearly twenty years, Moretti Morote would *more likely than not* be tortured on account of his family's past associations with that group. 8 C.F.R. § 1208.16(c).¹

Moretti Morote also attempts to bring a claim for ineffective assistance of counsel because his criminal attorney failed to advise him of the immigration consequences of his guilty plea. However, his isolated, passing reference in a supplement to his BIA brief was insufficient to put the agency on notice that this was an issue in the case, and therefore he failed to exhaust his administrative remedies. *See Zara v. Ashcroft*, 383 F.3d 927, 930 (9th Cir. 2004). As such, we dismiss this claim for lack of jurisdiction. *Sola v. Holder*, 720 F.3d 1134, 1136 (9th Cir. 2013) (per curiam).

PETITION DENIED IN PART, DISMISSED IN PART.

¹ We grant the government's Motion to Strike and deny Moretti Morote's Motion to Remand to the BIA to consider new country conditions reports and other evidence not previously presented to the BIA; however, this denial is without prejudice to Moretti Morote's ability to ask the BIA to consider such evidence in a motion to reopen. *See* 8 C.F.R. § 1003.2(c); *Go v. Holder*, 744 F.3d 604, 609 (9th Cir. 2014).