

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

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

PONCIANO ALBA-GUTIERREZ,

Petitioner,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 10-71230

Agency No. A092-177-378

MEMORANDUM*

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

Submitted November 18, 2014**
San Francisco, California

Before: FERNANDEZ and IKUTA, Circuit Judges, and DANIEL, Senior District
Judge.***

Ponciano Alba-Gutierrez (Alba) petitions for review of the Board of
Immigration Appeals' (BIA) order, which dismissed his appeal of an immigration

* 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 Wiley Y. Daniel, Senior District Judge for the U.S.
District Court for Colorado, sitting by designation.

judge's denial of his application for cancellation of removal under 8 U.S.C. § 1229b(a).

Alba's claim that the BIA violated the Equal Protection Clause in relying on his disability as a basis for denying cancellation of removal is not colorable. Alba failed to identify similarly situated individuals who were treated differently, and the government had a rational reason for denying relief to Alba. Accordingly, we lack jurisdiction to consider this claim. *See Mendez-Castro v. Mukasey*, 552 F.3d 975, 978 (9th Cir. 2009); *see also Coronado v. Holder*, 759 F.3d 977, 987–88 (9th Cir. 2014).

Alba did not cite the Rehabilitation Act of 1973 in his arguments to the BIA or otherwise indicate that he was making a claim under 29 U.S.C. § 794. Because he did not exhaust this claim, we lack jurisdiction to consider it. *See Young v. Holder*, 697 F.3d 976, 982 (9th Cir. 2012).

Finally, we lack jurisdiction to consider whether the BIA erred when it weighed the evidence underlying its discretionary determination. *See Mendez-Castro*, 552 F.3d at 979. Our review here is limited to legal and constitutional errors, *see* 8 U.S.C. § 1252(a)(2)(D), and Alba does not identify any legal error committed by the BIA in its review of the record.

PETITION DENIED.