

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

AUG 3 2016

FOR THE NINTH CIRCUIT

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

SALVADOR ZARATE,

Petitioner,

v.

LORETTA E. LYNCH, Attorney General,

Respondent.

No. 14-72434

Agency No. A070-814-780

MEMORANDUM*

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

Submitted July 26, 2016**

Before: SCHROEDER, CANBY, and CALLAHAN, Circuit Judges.

Salvador Zarate, a native and citizen of Guatemala, petitions for review of the Board of Immigration Appeals' ("BIA") order dismissing his appeal from an immigration judge's ("IJ") decision denying his application for asylum, withholding of removal, and protection under the Convention Against Torture

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

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

("CAT"). Our jurisdiction is governed by 8 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). We dismiss in part and deny in part the petition for review.

We lack jurisdiction to consider Zarate's ineffective assistance of counsel claim because he did not exhaust it before the BIA. *See Ontiveros-Lopez v. INS*, 213 F.3d 1121, 1124 (9th Cir. 2000) (requiring an alien who argues ineffective assistance of counsel to exhaust his administrative remedies by first presenting the issue to the BIA).

The IJ denied Zarate's claims for relief based on an adverse credibility determination and independently denied his claims on the merits. The BIA affirmed the IJ's denial only on the merits. Although Zarate challenges the IJ's adverse credibility determination and the BIA's failure to address the IJ's adverse credibility findings, he does not raise any challenge to the BIA's dispositive denial on the merits. *See Martinez-Serrano v. INS*, 94 F.3d 1256, 1259-60 (9th Cir. 1996) (issues not argued in opening brief deemed waived). Thus, we deny the petition as to Zarate's asylum, withholding of removal and CAT claims.

PETITION FOR REVIEW DISMISSED in part; DENIED in part.