

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

OCT 29 2018

FOR THE NINTH CIRCUIT

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

LUIS ALBERTO VALENCIA-AGUILAR,

No. 15-73163

Petitioner,

Agency No. A078-194-982

v.

MEMORANDUM*

JEFFERSON B. SESSIONS III, Attorney
General,

Respondent.

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

Submitted October 22, 2018**

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

Luis Alberto Valencia-Aguilar, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' order dismissing his appeal from an immigration judge's decision sustaining removability and denying his application for cancellation of removal. Our jurisdiction is governed by 8 U.S.C. § 1252. We

* 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).

review de novo questions of law. *Mohammed v. Gonzales*, 400 F.3d 785, 791-92 (9th Cir. 2005). We dismiss in part and deny in part the petition for review.

We lack jurisdiction to review Valencia-Aguilar's unexhausted challenges to the agency's removability finding and his unexhausted contention that his conviction under California Health and Safety Code § 11360 does not bar him from eligibility for cancellation of removal. *See Tijani v. Holder*, 628 F.3d 1071, 1080 (9th Cir. 2010) ("We lack jurisdiction to review legal claims not presented in an alien's administrative proceedings before the BIA.").

To the extent Valencia-Aguilar contends that the agency found him removable on the basis of his controlled substance conviction, the record does not support this contention.

The agency was correct that Valencia-Aguilar bore the burden of establishing that he was eligible for the relief he sought. *See* 8 U.S.C. § 1229a(c)(4)(A); 8 C.F.R. § 1240.8(d); *Rendon v. Mukasey*, 520 F.3d 967, 973 (9th Cir. 2008) (petitioner bears the burden of proving he is eligible for the discretionary relief of cancellation of removal.)

PETITION FOR REVIEW DISMISSED in part; DENIED in part.