

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

MAR 15 2019

FOR THE NINTH CIRCUIT

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

JAIME EFRAIN SANCHEZ RAMIREZ,

No. 16-70970

Petitioner,

Agency No. A071-864-495

v.

MEMORANDUM*

WILLIAM P. BARR, Attorney General,

Respondent.

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

Submitted March 12, 2019**

Before: LEAVY, BEA, and N.R. SMITH, Circuit Judges.

Jaime Efrain Sanchez Ramirez, a native and citizen of Mexico and legal permanent resident, petitions pro se for review of the Board of Immigration Appeals' ("BIA") decision denying his motion to remand and dismissing his appeal from an immigration judge's removal order. We have jurisdiction under

* 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).

8 U.S.C. § 1252. We review for abuse of discretion the denial of a motion to remand, and review de novo questions of law. *Mohammed v. Gonzales*, 400 F.3d 785, 791-92 (9th Cir. 2005). We deny the petition for review.

Sanchez Ramirez's contention that he is not removable because his conviction is a misdemeanor fails, where he pleaded guilty to a felony charge of use of a communication facility to facilitate distribution of cocaine under 21 U.S.C. § 843(b). *See* 21 U.S.C. § 843(d)(1) (punishment for a conviction under § 843 is imprisonment of not more than 4 years); 18 U.S.C. § 3559(a)(4) (a Class E felony is an offense that carries a maximum authorized term of imprisonment of less than five years, but more than one year). His reliance on *Abuelhawa v. United States*, 556 U.S. 816 (2009), to contend his conviction was for a misdemeanor is misplaced, where the court in that case did not determine that a conviction under § 843(b) is categorically a misdemeanor, but determined that the facts of Abuelhawa's case did not support a conviction under § 843(b). Accordingly, the BIA did not err in declining to remand in light of that decision.

To the extent Sanchez Ramirez challenges his criminal conviction, that collateral attack is not properly considered in a petition for review of a BIA decision. *See Ramirez-Villalpando v. Holder*, 645 F.3d 1035, 1041 (9th Cir. 2011).

The BIA did not err or abuse its discretion in declining to remand for Sanchez Ramirez to seek a § 212(h) waiver of inadmissibility in order to pursue

adjustment of status and cancellation of removal, where the agency correctly determined that his conviction is a drug trafficking offense, which cannot be waived. *See* 8 U.S.C. § 1182(h) (waiver only available for a single controlled substance offense for simple possession involving 30 grams or less of marijuana); *United States v. Jimenez*, 533 F.3d 1110 (9th Cir. 2008) (21 U.S.C. § 843(b) is a drug trafficking offense).

Sanchez Ramirez did not raise in his opening brief, and therefore waives, any challenge to the agency's denial of his motion to remand based on ineffective assistance of counsel and to seek withholding of removal and protection under the Convention Against Torture. *See Lopez-Vasquez v. Holder*, 706 F.3d 1072, 1079-80 (9th Cir. 2013) (issues not specifically and distinctly argued in an opening brief are waived); *Bazuaye v. INS*, 79 F.3d 118, 120 (9th Cir. 1996) ("Issues raised for the first time in the reply brief are waived.").

We do not consider the extra-record documents included with Sanchez Ramirez's opening brief because the court's review is generally limited to the administrative record. *See* 8 U.S.C. § 1252(b)(4)(A); *Dent v. Holder*, 627 F.3d 365, 371 (9th Cir. 2010) (stating standard for review of out-of-record evidence).

PETITION FOR REVIEW DENIED.