

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

OCT 21 2020

FOR THE NINTH CIRCUIT

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

FRANCISCO PAULA BRITO, AKA
Francisco Paula Simones De Brito,

Petitioner,

v.

WILLIAM P. BARR, Attorney General,

Respondent.

No. 17-72644

Agency No. A092-107-545

MEMORANDUM*

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

Submitted October 14, 2020**
Pasadena, California

Before: GOULD and LEE, Circuit Judges, and KORMAN,*** District Judge.

Francisco Brito, a native and citizen of Portugal, petitions for review of the Board of Immigration Appeal's decision affirming an Immigration Judge's denial of a discretionary waiver of inadmissibility under 8 U.S.C. § 1182(h). We review

* 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).

*** The Honorable Edward R. Korman, United States District Judge for the Eastern District of New York, sitting by designation.

questions of law and and due process challenges *de novo*. *Hong v. Mukasey*, 518 F.3d 1030, 1034 (9th Cir. 2008). We deny the petition.

1. 8 U.S.C. § 1252(a)(2) provides that “no court shall have jurisdiction to review . . . any judgment regarding the granting of relief under section 1182(h)” with the exception of “constitutional claims or questions of law.” 8 U.S.C. §§ 1252(a)(2)(B), (D). Brito seeks to avoid this jurisdictional bar by asserting that the agency employed the wrong legal standard in adjudicating his application for a waiver of inadmissibility. But contrary to Brito’s characterization of the agency’s decisions, the agency in fact: (1) did not impose remorse as a categorical requirement; (2) considered the absence of subsequent criminal activity following Brito’s 1989 conviction as a positive factor; (3) accounted for the hardship to Brito and his family; and (4) credited the testimony of Brito’s daughter. To the extent Brito is challenging the manner in which the agency weighed the evidence, we lack jurisdiction under 8 U.S.C. § 1252(a)(2) to review the agency’s factfinding. *See Mendoza v. Holder*, 623 F.3d 1299, 1302 (9th Cir. 2010).

2. Brito has not established that any competency or translation issue during his testimony violated due process. To prevail on a procedural due process claim, an alien must demonstrate: (1) that the proceeding was so fundamentally unfair that the alien was prevented from reasonably presenting his case; and (2) resulting prejudice. *Mendez-Garcia v. Lynch*, 840 F.3d 655, 665 (9th Cir. 2016).

Brito can show neither. While there were multiple instances of translation difficulties and momentary confusion, they were either resolved through follow-up questioning or did not impact the substance of Brito's testimony. Notably, Brito is unable to identify a single occasion in which competency or translation issues affected his testimony in a manner that may have changed the outcome of the proceedings. Accordingly, because the record does not reflect fundamental unfairness or resulting prejudice, Brito's due process claim fails.

DENIED.