

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

SEP 17 2021

FOR THE NINTH CIRCUIT

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

JOSE SIXTO ROJAS, AKA Ruben Tomas
Gutierrez,

Petitioner,

v.

MERRICK B. GARLAND, Attorney
General,

Respondent.

No. 19-70510

Agency No. A208-121-558

MEMORANDUM*

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

Submitted September 14, 2021**

Before: PAEZ, NGUYEN, and OWENS, Circuit Judges.

Jose Sixto Rojas, 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 denying his application for cancellation of removal. We have jurisdiction under 8 U.S.C. § 1252. We review de novo questions of law. *Jiang v.*

* 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).

Holder, 754 F.3d 733, 738 (9th Cir. 2014). We deny the petition for review.

The agency properly denied cancellation of removal, where Sixto Rojas failed to meet his burden of proof to establish that his conviction under California Health & Safety Code section 11550(a) is not a controlled substance violation that renders him ineligible for relief. *See* 8 U.S.C. § 1229b(b)(1)(C); *Pereida v. Wilkinson*, 141 S. Ct. 754, 760 (2021) (applicant for removal relief bears the burden of establishing eligibility for such relief, including that the applicant has not been convicted of certain disqualifying offenses); *Lopez v. Sessions*, 901 F.3d 1071, 1075 (9th Cir. 2018) (Federal First Offender Act treatment “only applies to first time drug offenders convicted of simple possession of a controlled substance”).

The temporary stay of removal remains in place until issuance of the mandate.

PETITION FOR REVIEW DENIED.