

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

APR 21 2023

FOR THE NINTH CIRCUIT

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

JUAN JESUS ESCARTIN-GUZMAN,

Petitioner,

v.

MERRICK B. GARLAND, Attorney
General,

Respondent.

No. 21-1257

Agency No.
A209-119-297

MEMORANDUM*

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

Submitted April 19, 2023**
Phoenix, Arizona

Before: TALLMAN, OWENS, and BADE, Circuit Judges.

Juan Jesus Escartin-Guzman, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals’ (“BIA”) decision dismissing his appeal of an immigration judge’s decision denying his application for cancellation of removal. We review de novo legal and constitutional questions, including alleged due process violations. *Vilchez v. Holder*, 682 F.3d 1195,

* 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).

1198 (9th Cir. 2012). As the parties are familiar with the facts, we do not recount them here. We deny the petition for review.

Escartin-Guzman argues that his due process rights were violated because the administrative record does not contain two hearing transcripts. The BIA denied Escartin-Guzman's due process claim on the ground that he failed to show prejudice, i.e., "that the outcome of the proceeding may have been affected by the" missing transcripts. *Zetino v. Holder*, 622 F.3d 1007, 1013 (9th Cir. 2010) (citation omitted).

The BIA did not err because Escartin-Guzman "offers only the vague assertion that, if a [transcript] was available, he might be able to locate" an issue raised at the hearings, such as administrative closure. *United States v. Medina*, 236 F.3d 1028, 1032 (9th Cir. 2001). "But this is 'no more than speculation to support his assertion of prejudice, and [he has] fail[ed] to set forth any plausible argument or factual basis' that would support his position." *Id.* (alteration in original) (citation omitted).

The stay of removal remains in place until the mandate issues.

PETITION DENIED.