

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

AUG 24 2023

FOR THE NINTH CIRCUIT

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

NELSON ANTONIO JIMENEZ,

Petitioner,

v.

MERRICK B. GARLAND, Attorney
General,

Respondent.

No. 22-1379

Agency No.
A094-453-889

MEMORANDUM*

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

Submitted August 15, 2023**

Before: TASHIMA, S.R. THOMAS, and FORREST, Circuit Judges.

Nelson Antonio Jimenez, a native and citizen of El Salvador, petitions pro se for review of the Board of Immigration Appeals’ (“BIA”) order denying his motion to remand, and dismissing his appeal from an immigration judge’s (“IJ”) decision denying his application for withholding of removal. We have jurisdiction

* 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).

under 8 U.S.C. § 1252. We review the denial of a motion to remand for abuse of discretion. *Taggar v. Holder*, 736 F.3d 886, 889 (9th Cir. 2013). We review for substantial evidence the agency’s factual findings. *Conde Quevedo v. Barr*, 947 F.3d 1238, 1241 (9th Cir. 2020). We deny the petition for review.

The BIA did not abuse its discretion in denying Jimenez’s motion to remand where he failed to establish prejudice from the alleged violation of 8 C.F.R. § 1240.10(c). *See Kohli v. Gonzales*, 473 F.3d 1061, 1066 (9th Cir. 2007) (applicant must show that he was prejudiced by the agency’s violation of its own regulation); *see also Padilla-Martinez v. Holder*, 770 F.3d 825, 830 (9th Cir. 2014) (“To prevail on a due-process claim, a petitioner must demonstrate both a violation of rights and prejudice.”). Jimenez’s contention that there should be a presumption of prejudice under these circumstances is not properly before the court because he failed to raise it before the BIA. *See* 8 U.S.C. § 1252(d)(1) (exhaustion of administrative remedies required); *see also Santos-Zacaria v. Garland*, 143 S. Ct. 1103, 1113-14 (2023) (section 1252(d)(1) is a non-jurisdictional claim-processing rule).

The record does not support Jimenez’s contentions that the agency ignored arguments, demonstrated bias, misstated the record, or otherwise erred in its analysis. *See Padilla-Martinez*, 770 F.3d 825 at 830; *see also Najmabadi v.*

Holder, 597 F.3d 983, 990 (9th Cir. 2010) (the agency adequately considered evidence and sufficiently announced its decision).

Substantial evidence supports the agency’s denial of withholding of removal because Jimenez failed to show a clear probability of future persecution. *See, e.g., Nagoulko v. INS*, 333 F.3d 1012, 1018 (9th Cir. 2003) (feared persecution “too speculative” to support asylum claim). Thus, his withholding of removal claim fails.

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

PETITION FOR REVIEW DENIED.