NOT FOR PUBLICATION

FILED

SEP 10 2026

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

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

DANIEL FLAT LATU,

Petitioner,

v.

TODD BLANCHE, Attorney General,

Respondent.

No. 21-369

Agency No.
A018-505-714

MEMORANDUM*

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

Argued and Submitted August 31, 2026
San Francisco, California

Before: GOULD, BYBEE, and BRESS, Circuit Judges

Daniel Flat Latu, a native and citizen of Tonga who was admitted as a lawful permanent resident, petitions for review of a Board of Immigration Appeals' (BIA) decision dismissing his appeal of an immigration judge's (IJ) denial of his application for a discretionary waiver of inadmissibility under § 212(c) of the

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

Immigration and Nationality Act (INA).[1] We have jurisdiction under 8 U.S.C. § 1252, and we deny the petition.

1. Denials of waivers of admissibility under § 212(c) are purely discretionary agency actions that are "not reviewable." *Vargas-Hernandez v. Gonzales*, 497 F.3d 919, 923 (9th Cir. 2007) (citing 8 U.S.C. § 1252(a)(2)(B)(ii)). However, we "do[] have jurisdiction to review whether the IJ considered relevant evidence in making this decision," which we review for abuse of discretion. *Szonyi v. Barr*, 942 F.3d 874, 896 (9th Cir. 2019).

Here, there is no indication in the record that either the IJ or the BIA overlooked evidence relevant to Latu's case. The agency considered Latu's positive equities, including his lengthy residence in this country, his long employment history, and his care of his parents and ten U.S. citizen children (including a disabled son). The agency also considered Latu's expressions of remorse and his seeking treatment for excessive drinking. But the agency also weighed various negative considerations, namely, Latu's substantial criminal history and his minimizing his culpability associated with a domestic violence incident and a conviction for

[1] Section 212(c) was repealed in 1996, but the relief it conferred is still "available for aliens . . . whose convictions were obtained through plea agreements and who, notwithstanding those convictions, would have been eligible for § 212(c) relief at the time of their plea under the law then in effect." *INS v. St. Cyr*, 533 U.S. 289, 326 (2001). The parties do not dispute that Latu could be eligible for such relief.

diversion of funds. The agency did not fail to address relevant evidence. *See Vilchez v. Holder*, 682 F.3d 1195, 1201 (9th Cir. 2012) (the agency is not required "to write an exegesis on every contention") (quoting *Najmabadi v. Holder*, 597 F.3d 983, 990 (9th Cir. 2010)). Nor may we reweigh the equities and override the IJ's determination not to exercise discretion under § 212(c). *See Vargas-Hernandez*, 497 F.3d at 923.

2. Latu also argues that his procedural due process rights were violated by the IJ's admission of police reports associated with his domestic violence and diversion of funds convictions, without cross-examination of the authors of the reports. We review due process challenges to agency actions de novo. *Chavez-Reyes v. Holder*, 741 F.3d 1, 3 (9th Cir. 2014). "To prevail on a due process challenge to deportation proceedings, [a petitioner] must show error and substantial prejudice." *Grigoryan v. Barr*, 959 F.3d 1233, 1240 (9th Cir. 2020) (quoting *Lata v. INS*, 204 F.3d 1241, 1246 (9th Cir. 2000)). Prejudice in this context "means that the outcome of the proceeding may have been affected by the alleged violation." *Zetino v. Holder*, 622 F.3d 1007, 1013 (9th Cir. 2010) (quoting *Ibarra-Flores v. Gonzales*, 439 F.3d 614, 620–21 (9th Cir. 2006)). Latu's challenges to the IJ's consideration of the police reports lack merit.

Regarding the domestic violence police report, Latu did not raise this issue before the BIA. This issue is therefore unexhausted, and we may not grant relief based on it. *See Umana-Escobar v. Garland*, 69 F.4th 544, 550 (9th Cir. 2023), *as amended*. Regardless, the challenge would fail on the merits. Latu's counsel admitted before the IJ that the report was admissible, and Latu never requested cross-examination of the report's author. Latu was also not entitled to cross-examination because he provided no basis to conclude that the report contained material errors. *See Hernandez v. Garland*, 52 F.4th 757, 767 (9th Cir. 2022) ("Where the applicant 'has offered no evidence to show that the form contains material errors,' there is no right to demand cross-examination.") (quoting *Espinoza v. INS*, 45 F.3d 308, 310 (9th Cir. 1995)). Latu did not dispute that he engaged in an altercation with his then-wife, and he further agreed that he had seen pictures of his ex-wife with her face black and blue and swollen.

Regarding the IJ's consideration of the police report for unlawful diversion of funds, the IJ likewise did not err. In this case, the report's author, Detective Collins, did testify in Latu's earlier immigration proceedings. Although his testimony was not recorded, Latu did not object to the later introduction of the report without cross-examination, nor did Latu request that Collins testify again. Regardless, Latu did not suffer "substantial prejudice," *Grigoryan*, 959 F3d. at 1240, as the basic facts were not disputed: Latu took money from customers of his home renovation business, did not complete the work, and did not repay the customers. *See Hernandez*, 52 F.4th at 767 (noting that an "alien 'may not assert a cross-examination right to prevent the government from establishing uncontested facts'" (quoting *Espinoza*, 45 F.3d at 311) (emphasis omitted)).

PETITION DENIED.[2]

[2] The motion for stay of removal, Dkt. 3, is denied.