FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JUAN GUILLERMO SANCHEZ-RUANO, *Petitioner*, v. MERRICK B. GARLAND, Attorney General, *Respondent.*	No. 18-71760 Agency No. A200-246-286 OPINION

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

Submitted June 16, 2021[*]
San Francisco, California

Filed August 11, 2021

Before: Mary M. Schroeder, Milan D. Smith, Jr., and Lawrence VanDyke, Circuit Judges.

Opinion by Judge VanDyke

[*] The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

SUMMARY[**]

Immigration

Denying Juan Guillermo Sanchez-Ruano's petition for review of a decision of the Board of Immigration Appeals, the panel concluded that Sanchez-Ruano was ineligible for cancellation of removal due to his conviction of an offense described under 8 U.S.C. § 1182(a)(2), which describes a ground of inadmissibility, even though he had been admitted into the United States.

The panel explained that, with respect to determining removability, aliens who have not been admitted and commit certain crimes are inadmissible under § 1182(a), while aliens who have been admitted and commit certain crimes are deportable under § 1227(a). With respect to relief, the panel explained that § 1229b(b)(1)(C) bars cancellation of removal if an alien has been convicted of "an offense under" §§ 1182(a)(2), 1227(a)(2), or 1227(a)(3). Sanchez-Ruano argued that: (1) because he had been admitted, § 1227(a)(2)—not § 1182(a)(2)—applied to him for the purposes of cancellation, and, accordingly, (2) the personal-use exception for marijuana possession that is available under § 1227(a)(2)(B)(i), but not § 1182(a)(2), rendered him eligible for cancellation.

The panel concluded that his argument failed at the first step under *Gonzalez-Gonzalez v. Ashcroft*, 390 F.3d 649 (9th Cir. 2004), where the court held that § 1229b should be read

[**] This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

to cross reference a list of offenses in the three statutes, rather than the statutes as a whole. The panel observed that *Gonzalez-Gonzalez* concerned a petitioner who illegally entered and argued that § 1227 did not apply to him, while Sanchez-Ruano presented the inverse situation because he legally entered and argued that § 1182 did not apply to him. The panel concluded that this was a distinction without a difference, explaining that the point of the holding in *Gonzalez-Gonzalez* is that if a petitioner committed an offense described under any of the three statutes cross-referenced in § 1229b(b)(1)(C), the petitioner is statutorily ineligible for cancellation of removal.

Given Sanchez-Ruano's conviction of an offense described under § 1182(a)(2), the panel concluded that the agency correctly determined that he was statutorily ineligible for cancellation.

COUNSEL

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OPINION

VANDYKE, Circuit Judge:

In this case, Petitioner Juan Guillermo Sanchez-Ruano argues that the agency erred in finding him ineligible for cancellation of removal. The agency found him ineligible under 8 U.S.C. § 1229b(b)(1)(C) due to his conviction of an offense described under 8 U.S.C. § 1182(a)(2).[1] Sanchez-Ruano argues that § 1182(a)(2) does not apply to him for the purposes of cancellation of removal because he was previously admitted into the United States. But we previously determined that "all offenses described in the statutes" cross-referenced by § 1229b(b)(1)(C), including § 1182(a)(2), "apply to all aliens—regardless of admission status—for purposes of § 1229b(b)(1)(C)'s bar on cancellation of removal." *Lozano-Arredondo v. Sessions*, 866 F.3d 1082, 1090 (9th Cir. 2017) (discussing *Gonzalez-Gonzalez v. Ashcroft*, 390 F.3d 649, 652–53 (9th Cir. 2004)). Moreover, "[e]ach of the cross-referenced offense sections is a separate barrier to cancellation of removal." *Vasquez-Hernandez v. Holder*, 590 F.3d 1053, 1056 (9th Cir. 2010). We therefore deny Sanchez-Ruano's petition for review.

I.

Sanchez-Ruano, a native and citizen of Mexico, was admitted into the United States in 1995 as a temporary visitor. But he overstayed his authorized visit and has since amassed a string of criminal convictions for various crimes

[1] The IJ referenced INA Section 240A(b)(1), which is codified at 8 U.S.C. § 1229b(b)(1). *Ibarra-Flores v. Gonzales*, 439 F.3d 614, 617 (9th Cir. 2006). The IJ also referenced INA Section 212(a)(2), which is codified at 8 U.S.C. § 1182(a)(2). *Pondoc Hernaez v. INS*, 244 F.3d 752, 756 (9th Cir. 2001).

over an eight-year span. These crimes include possessing marijuana, receiving stolen property, driving under the influence, and being the driver in two hit-and-runs.

In May of 2013, DHS served Sanchez-Ruano with Form I-261, which charged him with removability under 8 U.S.C. § 1227(a)(1)(B) for remaining in the country longer than permitted.[2] Sanchez-Ruano conceded the charge before the IJ. He indicated that he would seek cancellation of removal but requested a continuance pending the status of his U Nonimmigrant Status ("U-visa") application. After numerous continuances and years of litigation on his U-visa application (which USCIS ultimately denied), the IJ denied Sanchez-Ruano's application for cancellation of removal. The IJ determined that he was statutorily ineligible for cancellation of removal due to his conviction for marijuana possession, which is a conviction for an offense described under § 1182(a)(2).

Sanchez-Ruano appealed to the BIA and argued that, given his previous admittance, § 1182(a)(2) did not apply to him for the purposes of cancellation of removal. He further argued that the personal use exception for violations involving 30 grams or less of marijuana under § 1227(a)(2)(B)(i) rendered him eligible for cancellation of removal. The BIA dismissed his appeal without expressly analyzing this argument.

Sanchez-Ruano petitioned this court for review, arguing again that § 1182(a)(2) does not apply to him for the purpose of cancellation of removal given his previous admittance,

[2] Form I-261 specifically referenced INA Section 237(a)(l)(B), which is codified at 8 U.S.C. § 1227(a)(1)(B). *See Shin v. Mukasey*, 547 F.3d 1019, 1023 (9th Cir. 2008).

and that the personal use exception under § 1227(a)(2)(B)(i) rendered him eligible for relief.[3]

II.

Where, as here, "the BIA's analysis on the relevant issues is confined to a simple statement of a conclusion, we [] look to the IJ's oral decision as a guide to what lay behind the BIA's conclusion." *Jin v. Holder*, 748 F.3d 959, 964 (9th Cir. 2014) (citation omitted).[4] "We review issues of statutory interpretation de novo." *Gonzalez-Gonzalez*, 390 F.3d at 651.

In determining whether the agency properly interpreted 8 U.S.C. § 1229b, "we employ the analysis set forth … in *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, as further explained in *Food and Drug Administration v. Brown & Williamson Tobacco Corp*." *Gonzalez-Gonzalez*, 390 F.3d at 651 (citations omitted). But when binding precedent and the statutory language dictate the result, we have simply looked to precedent and statutory text without engaging in a detailed *Chevron* analysis. *See Vasquez-Hernandez*, 590 F.3d at 1056–57.

[3] Sanchez-Ruano's petition does not raise any arguments pertaining to obtaining a waiver under 8 U.S.C. § 1182(h), like he did before the BIA. He has therefore waived that issue. *See Rizk v. Holder*, 629 F.3d 1083, 1091 n.3 (9th Cir. 2011).

[4] The fact that the BIA did not expressly analyze Sanchez-Ruano's argument raised in his petition is of no import. The BIA's "simple statement of a conclusion" dismissing Sanchez-Ruano's appeal directs us to review the IJ's analysis of that issue. *See Avetova-Elisseva v. INS*, 213 F.3d 1192, 1197 (9th Cir. 2000).

III.

To fully understand the statutory nuances at issue, some background is helpful. There are a variety of reasons aliens may be removed from the United States under federal immigration law. Those reasons include, as relevant here, convictions for various crimes. But which crimes trigger removal depend on the alien's status. Aliens who have not been admitted legally and commit certain crimes in the United States are *inadmissible*. *See Vasquez-Hernandez*, 590 F.3d at 1055; 8 U.S.C. § 1182(a)(2). Aliens who have entered the United States lawfully and have committed certain crimes are *deportable*. *See Vasquez-Hernandez*, 590 F.3d at 1055; 8 U.S.C. § 1227(a)(2). "The list of offenses related to inadmissibility [] in 8 U.S.C. § 1182(a)[] and the list of offenses related to deportability [] in 8 U.S.C. § 1227(a) …. are sometimes overlapping and sometimes divergent." *Ortega-Lopez v. Barr*, 978 F.3d 680, 682 (9th Cir. 2020) (citation and internal quotation marks omitted).

"Before an alien is removed from the United States, a court usually completes two separate inquiries." *Vasquez-Hernandez*, 590 F.3d at 1055. "First, a court must find that an alien is removable." *Id.* As explained, at that stage, whether the government seeks to show an alien is inadmissible or deportable makes a difference; the reasons why an alien can be removed vary "depend[ing] on whether the alien is *inadmissible* or *deportable*." *Id.* But once the inquiry moves to the second stage—i.e., relief from removal (which includes seeking cancellation of removal)—the distinction between an inadmissible and deportable alien becomes irrelevant. As our court has explained:

> Once an alien is found removable, the alien may seek relief from removal through *cancellation of removal* under § 1229b(b).

> Cancellation of removal is available for both inadmissible and deportable aliens. Unlike the removal statutes, the cancellation of removal statute does not treat inadmissible and deportable aliens differently. *Rather, the requirements for cancellation of removal apply regardless of whether the alien is inadmissible or deportable for removal purposes*.

Id. (citing *Gonzalez-Gonzalez*, 390 F.3d at 652) (second emphasis added) (internal citation omitted).

Cancellation of removal is not available if an alien has been convicted of "an offense described in §§ 1182(a)(2), 1227(a)(2), or 1227(a)(3)." *Id.* (citing 8 U.S.C. § 1229b(b)).[5] Because it is

> irrelevant whether the alien seeking cancellation of removal was in the country unlawfully (and therefore subject to grounds of inadmissibility) or was in the country lawfully (and therefore subject to grounds of deportability) …. [T]he alien d[oes] not qualify for cancellation of removal if the alien ha[s] been convicted of an offense listed in any of the three statutes.

[5] Only 8 U.S.C. § 1229b(b), which applies to cancellation of removal and adjustment of status for certain *nonpermanent* residents, is at issue here. 8 U.S.C. § 1229b(a), which applies to cancellation of removal for certain *permanent* residents and contains different requirements, is not implicated in this case.

Ortega-Lopez, 978 F.3d at 688; *see also Lozano-Arredondo*, 866 F.3d at 1090.

IV.

Sanchez-Ruano argues that: (1) because he was previously admitted into the United States, only § 1227(a)(2)—not § 1182(a)(2)—applies to him for the purposes of cancellation of removal, and, accordingly, (2) the personal-use exception for marijuana possession that is available under § 1227(a)(2)(B)(i), but not § 1182(a)(2), renders him eligible for cancellation of removal. His argument fails at the first step under *Gonzalez-Gonzalez*.

In *Gonzalez-Gonzalez*, the petitioner illegally entered the United States and was charged with removability pursuant to 8 U.S.C. § 1182(a)(6)(A)(i) for entering the country without being admitted or paroled. 390 F.3d at 650. The IJ found the petitioner ineligible for cancellation of removal due to a domestic violence conviction, which "is listed as an offense under § 1227(a)(2)." *Id.* On appeal before the BIA, the petitioner argued that he would only be ineligible for cancellation of removal "for commission of offenses listed under § 1182(a)(2)—and not the § 1227 offenses—as he [wa]s an inadmissible, rather than deportable, alien." *Id.* The BIA rejected this argument, reasoning that the "§ 1229b phrase 'convicted of an offense under' [means] 'convicted of an offense *described* under' any of the three statutes." *Id.* A unanimous panel of our court agreed, concluding that "[t]he plain language of § 1229b indicates that it should be read to cross-reference a list of offenses in three statutes, rather than the statutes as a whole." *Id.* at 652. Since then, our court has repeatedly affirmed the rule that "all offenses described in the statutes apply to all aliens—regardless of admission status—for purposes of § 1229b(b)(1)(C)'s bar on

cancellation of removal." *Lozano-Arredondo*, 866 F.3d at 1090.

Gonzalez-Gonzalez controls this case. Sanchez-Ruano concedes that he was convicted for an offense described in § 1182(a). And just like the petitioner in *Gonzalez-Gonzalez*, Sanchez-Ruano argues that one of the statutes cross-referenced in § 1229b(b)(1)(C) doesn't apply to him given his admission status. But pursuant to *Gonzalez-Gonzalez*, we must reject his argument under the rule that a conviction for an offense described under *any* of the statutes cross-referenced in § 1229b(b)(1)(C) renders an alien ineligible for cancellation of removal, regardless of admission status. *See Ortega-Lopez*, 978 F.3d at 692 (discussing *Gonzalez-Gonzalez*).

To be sure, *Gonzalez-Gonzalez* concerned a petitioner who *illegally* entered the United States and argued that *§ 1227* did not apply for the purposes of cancellation of removal. 390 F.3d at 650–52. Here, Sanchez-Ruano presents the inverse situation; he *legally* entered and therefore argues that *§ 1182* does not apply for the purposes of cancellation of removal. But this is a distinction without a difference under *Gonzalez-Gonzalez*'s rationale, where the panel reasoned that:

> The plain language of § 1229b indicates that it should be read to cross-reference a list of offenses in three statutes, rather than the statutes as a whole. The most logical reading of "convicted of an offense under" is that reached by the BIA: "convicted of an offense *described* under" each of the three sections.

Id. at 652. This reasoning applies fully here.[6] The commission of an offense listed under any of three statutes cross-referenced in § 1229b(b)(1)(C) bars cancellation of removal, *regardless* of whether the petitioner entered illegally and committed an offense described under § 1227(a)(2), or whether the petitioner entered legally and committed an offense described under § 1182(a)(2). As subsequent panels have recognized, the point of our holding in *Gonzalez-Gonzalez* is that if a petitioner committed an offense described under *any* of the three statutes cross-referenced in § 1229b(b)(1)(C), the petitioner is statutorily ineligible for cancellation of removal. *See Lozano-Arredondo*, 866 F.3d at 1090. Given Sanchez-Ruano's conviction of an offense described under § 1182(a)(2), the agency correctly determined that he was statutorily ineligible for cancellation of removal.[7]

PETITION DENIED.

[6] At least one other circuit has concluded that, just like in this case, an admitted alien who overstayed his visa and was charged with removability pursuant to §§ 1227(a)(1)(B), 1227(a)(2)(A)(ii), and 1227(a)(2)(B)(I) was ineligible for cancellation of removal due his conviction of an offense listed under § 1182(a)(2)(A)(i)(I). *See Barma v. Holder*, 640 F.3d 749, 749–51 (7th Cir. 2011).

[7] Sanchez-Ruano's reliance on *Matter of Bustamante*, 25 I. & N. Dec. 564 (BIA 2011), and *Guerrero-Roque v. Lynch*, 845 F.3d 940 (9th Cir. 2017) (per curiam), is unpersuasive, as neither case suggests that the applicability of the statutes cross-referenced in § 1229b(b)(1)(C) depends on an alien's admission status.