

United States Court of Appeals for the Fifth Circuit

No. 21-60013
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

March 3, 2023

Lyle W. Cayce
Clerk

JUSTINO OCELOTL-FLORES,

Petitioner,

versus

MERRICK GARLAND, *U.S. Attorney General,*

Respondent.

Petition for Review of an Order of the
Board of Immigration Appeals
Agency No. A215 658 689

Before HIGGINBOTHAM, GRAVES, and HO, *Circuit Judges.*

PER CURIAM:*

Justino Ocelotl-Flores, a native and citizen of Mexico, petitions for review of the decision of the Board of Immigration Appeals (BIA) dismissing his appeal from the decisions of the Immigration Judge (IJ) denying his motion to continue and his application for cancellation of removal. *See* 8 U.S.C. § 1252(a), (b). This court recently held that, under *Patel v. Garland*,

* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

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142 S. Ct. 1614, 1622-23 (2022), the hardship determination for purposes of cancellation of removal “is a discretionary and authoritative decision” which “is beyond our review” under the jurisdiction-stripping provision of § 1252(a)(2)(B)(i). *Castillo-Gutierrez v. Garland*, 43 F.4th 477, 481 (5th Cir. 2022).

We lack jurisdiction to review Ocelotl-Flores’s disputes with the agency’s factual findings and the discretionary denial of cancellation of removal. *Id.* We are likewise without jurisdiction to review the BIA’s decision to rely solely on Ocelotl-Flores’s failure to make the hardship showing and not address the issues of his physical presence and moral character. *See Patel*, 142 S. Ct. at 1622. Challenges to the IJ’s adverse credibility finding, where the BIA presumed Ocelotl-Flores was credible, as well as disputes as to the IJ’s legal standards and conclusions regarding Ocelotl-Flores’s physical presence and moral character, are not properly before this court. *See Hongyok v. Gonzales*, 492 F.3d 547, 549 (5th Cir. 2007).

As to the motion to continue, Ocelotl-Flores identified no evidence on appeal to the BIA the absence of which prevented him from establishing hardship. He thus failed to show prejudice, as the BIA concluded, and the BIA acted within its discretion in affirming the IJ’s denial of the motion to continue. *See Masih v. Mukasey*, 536 F.3d 370, 373 (5th Cir. 2008).

The petition for review is DISMISSED for lack of jurisdiction in part and DENIED in part.