

United States Court of Appeals
For the Eighth Circuit

No. 25-3343

Nabor Garcia Ortiz

Petitioner

v.

Todd Blanche, Attorney General of the United States

Respondent

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

Submitted: September 21, 2026

Filed: October 1, 2026

[Unpublished]

Before LOKEN, KELLY, and JUSTIN D. SMITH, Circuit Judges.

PER CURIAM.

Mexican citizen Nabor Garcia Ortiz petitions for review of an order of the Board of Immigration Appeals (BIA), which dismissed his appeal from an

immigration judge's (IJ's) decision denying his application for cancellation of removal.¹ We deny the petition for review.

The BIA concluded that Garcia Ortiz waived review of the IJ's alternative ruling that cancellation of removal should be denied as a matter of discretion because Garcia Ortiz did not specifically address that aspect of the IJ's decision in his counseled administrative appeal brief. Because the IJ's alternative ruling was independently dispositive of the application for relief, the BIA declined to reach the argument Garcia Ortiz raised in his administrative appeal. In this court, Garcia Ortiz argues that the BIA erred in concluding he failed to address the IJ's discretionary determination, and that the BIA's refusal to consider the substantive argument he raised in his administrative appeal resulted in a violation of his due process rights.

Upon careful consideration of the record and the parties' arguments on appeal, we discern no error in the BIA's decision. See 8 U.S.C. § 1252(a)(2)(B), (a)(2)(D) (no judicial review of judgment regarding cancellation-of-removal relief except for constitutional claims and questions of law); Aguilar-Hernandez v. Bondi, 163 F.4th 537, 539 (8th Cir. 2026) (this court reviews questions of immigration law de novo). The record shows that Garcia Ortiz's administrative appeal challenged only the IJ's eligibility determination, and not its discretionary determination. Because Garcia Ortiz failed to challenge the discretionary determination, the BIA appropriately applied its waiver rule and dismissed the appeal. See Wilkinson v. Garland, 601 U.S. 209, 213 (2024) (discussing cancellation-of-removal's two-step process involving statutory criteria and exercise of discretion); see also Quijano-Duran v. Bondi, 172 F.4th 991, 994 (8th Cir. 2026) (describing BIA's waiver rule; noncitizen "had the burden to clearly and specifically inform the BIA of the bases for [his] assertions of

¹Because Garcia Ortiz does not meaningfully challenge the denial of voluntary departure, the issue is not before this panel. See Chay-Velasquez v. Ashcroft, 367 F.3d 751, 756 (8th Cir. 2004).

error”); Pinos-Gonzalez v. Mukasey, 519 F.3d 436, 440 (8th Cir. 2008) (considering question of whether BIA followed its own rule to the extent it presented a legal question; concluding, based on record, that the BIA committed no error in applying its own waiver rule). We further conclude that, having correctly deemed the discretionary determination waived, the BIA was not required to consider the issue Garcia Ortiz raised in his administrative appeal. See Pinos-Gonzalez, 519 F.3d at 440 (BIA was not required to consider waived legal argument under procedural regulations). We thus conclude that Garcia Ortiz’s due process challenge fails because he could show neither a procedural error, nor that he had a protected interest in cancellation-of-removal relief. See Alva-Arellano v. Lynch, 811 F.3d 1064, 1066 (8th Cir. 2016) (to establish due process violation, noncitizen must demonstrate both fundamental error and prejudice); Pinos-Gonzalez, 519 F.3d at 441 (no due process right in discretionary cancellation-of-removal relief).

The petition is denied. See 8th Cir. R. 47B.
