NOT FOR PUBLICATION

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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CANDELARIA CRUZ-MARTINEZ; JOSE ALBERTO BIRRUETA-CRUZ; ALMA JHUSDIVIA PULIDO-CRUZ; MIGUEL ANGEL PULIDO-CRUZ, Petitioners, v. MERRICK B. GARLAND, Attorney General, Respondent.	No. 19-70908 Agency Nos. A206-455-415 A206-455-416 A206-455-417 A206-455-418 MEMORANDUM*

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

Submitted December 7, 2022**
Seattle, Washington

Before: O'SCANNLAIN, McKEOWN, and MILLER, Circuit Judges.

Candelaria Cruz-Martinez and her three minor children petition for review of the Board of Immigration Appeals' ("BIA's") denial of reconsideration of its earlier

* 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).

dismissal of her appeal. As the facts are known to the parties, we repeat them only as necessary to explain our decision. We review denials of reconsideration for abuse of discretion. *Toor v. Lynch*, 789 F.3d 1055, 1059 (2015). When, as here, a petition for review is timely only with respect to the denial of motion to reconsider, our jurisdiction is limited to that denial, and we do not review the initial BIA decision directly. *Stone v. INS*, 514 U.S. 386, 405-06 (1995).

I

Cruz-Martinez argues that the BIA should have reconsidered her appeal because its initial decision ignored her argument that she belonged to the particular social group ("PSG") of landowners in Michoacan, Mexico.

The BIA denied reconsideration because Cruz-Martinez forfeited this argument by failing to exhaust it in her initial administrative appeal. *See Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006). To exhaust an argument for protection based on a PSG, a petitioner must "clearly indicate the exact delineation of any [PSG] to which she claims to belong." *Matter of W-Y-C- & H-O-B-*, 27 I&N Dec. 189, 191 (BIA 2018) (cleaned up). Cruz-Martinez's administrative appeal brief argued that she belonged to a PSG of landowners who refuse to support a particular community self-defense group. The initial BIA decision rejected this proposed group as lacking the requisite particularity and social distinction. Nowhere in Cruz-Martinez's administrative appeal brief did she clearly assert a PSG consisting of

landowners without further qualification. While Cruz-Martinez did argue for the non-qualified landowner PSG in her proceedings before the Immigration Judge ("IJ"), the BIA was under no obligation to scour the administrative record for legal claims which Cruz-Martinez could have but did not raise on appeal. It was thus not an abuse of discretion for the BIA to conclude that its initial decision considered all PSG arguments properly before it.

In any event, the original BIA decision identified alternate grounds for upholding the IJ decision: there was no nexus between the harms Cruz-Martinez suffered and her membership in *any* group. *See Matter of N-M-*, 25 I&N Dec. 526, 531-32 (BIA 2011). Since Cruz-Martinez's motion to reconsider did not challenge these alternate grounds, it could not have succeeded even if the BIA had erred in refusing to consider the non-qualified landowner PSG.

II

Cruz-Martinez also argues that the BIA should have reconsidered her appeal because the IJ decision and initial BIA decision ignored relevant evidence. *See Cole v. Holder*, 659 F.3d 762, 771-72 (9th Cir. 2011). But Cruz-Martinez points to no indicia of ignoring relevant evidence such as "misstating the record" or "failing to mention highly probative or potentially dispositive evidence." *Id.* at 772. She argues only that the IJ and BIA disregarded her testimony of government acquiescence when, after discussing her testimony in detail, they concluded that there was "no

evidence" and "no indication" of government acquiescence. In isolation, these statements could be interpreted to mean that the IJ and BIA were ignoring Cruz-Martinez's testimony. But in context, they can reasonably be interpreted otherwise, to mean that the BIA and IJ found Cruz-Martinez's testimony credible as a statement of her individual experience, but unpersuasive as an account of objective social conditions. *See Garland v. Ming Dai*, 141 S. Ct. 1669, 1680 (2021) (distinguishing credibility from factual accuracy). It was not an abuse of discretion for the BIA's denial of reconsideration so to construe the IJ and initial BIA decisions, and so to reject Cruz-Martinez's argument that its initial decision ignored relevant evidence.

* * *

The petition for review is **DENIED.**