FILED
United States Court of Appeals
Tenth Circuit

September 3, 2021

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

NOEL MANZANO-ANORVE,

Petitioner,

v.

MERRICK B. GARLAND,
United States Attorney General,

Respondent.

No. 21-9501
(Petition for Review)

ORDER AND JUDGMENT*

Before **HARTZ**, **PHILLIPS**, and **EID**, Circuit Judges.

Petitioner Noel Manzano-Anorve petitions for review of a decision from the Board of Immigration Appeals (BIA) denying his motion to reopen. Exercising jurisdiction under 8 U.S.C. § 1252, we deny the petition.

I. Background

Mr. Manzano-Anorve first illegally entered the United States in May 1997 but was placed in expedited removal proceedings and was removed at the end of that

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* After examining the briefs and appellate record, this panel has determined unanimously to honor the parties' request for a decision on the briefs without oral argument. *See* Fed. R. App. P. 34(f); 10th Cir. R. 34.1(G). The case is therefore submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

same month. He illegally reentered the United States in March 2000. Over fifteen years later, in January 2016, the DHS issued a "Notice of Intent/Decision to Reinstate the Prior [Removal] Order." R. at 525.

Mr. Manzano-Anorve then filed an application for withholding of removal and CAT protection. He asserted that he feared harm if he returned to Mexico based on his membership in a particular social group. In his pre-hearing statement, he attached a declaration from Benjamin Thomas Smith, a professor of Latin American History whom Mr. Manzano-Anorve tendered as an expert in Mexican organized crime.

An IJ denied Mr. Manzano-Anorve's application for withholding of removal and CAT protection and Mr. Manzano-Anorve appealed. The BIA dismissed the appeal, upholding the IJ's determination that Mr. Manzano-Anorve was not eligible for withholding of removal because he did not establish membership in any cognizable particular social group. The BIA also agreed with the IJ that Mr. Manzano-Anorve had not met his burden of showing his entitlement to CAT protection. The BIA noted the IJ's findings that Mr. Manzano-Anorve had similarly situated family members in Mexico who have remained there unharmed and that Mr. Manzano-Anorve could relocate within Mexico to avoid the individuals he fears. Finally, the BIA agreed with the IJ that Mr. Manzano-Anorve had not shown that a government official, or anyone acting in an official capacity, would acquiesce to his torture.

Mr. Manzano-Anorve did not file a petition for review of the BIA's decision; instead, he filed a motion to reopen. In support of his motion, he attached the same

declaration by Dr. Smith that he attached to his pre-hearing statement. The BIA denied the motion to reopen and Mr. Manzano-Anorve now petitions for review of that decision.

II. Discussion

"We review the BIA's denial of [Mr. Manzano-Anorve's] motion to reopen for an abuse of discretion. *Qiu v. Sessions*, 870 F.3d 1200, 1202 (10th Cir. 2017). "The BIA abuses its discretion when its decision provides no rational explanation, inexplicably departs from established policies, is devoid of any reasoning, or contains only summary or conclusory statements." *Id.* (internal quotation marks omitted).

A motion to reopen is used to present new evidence to the BIA. *See Matter of Cerna*, 20 I. & N. Dec. 399, 403 (BIA 1991) ("[A] motion to reopen proceedings seeks to reopen proceedings so that new evidence can be presented . . . ."). The motion must "state the new facts that will be proven at a hearing if the motion is granted, and shall be supported by affidavits or other evidentiary material." 8 U.S.C. § 1229a(c)(7)(B).

Here, the BIA explained that Mr. Manzano-Anorve "ha[d] proffered no new evidence with the motion," instead, he "attached the expert statement that is already part of the record and was considered by the [IJ]." R. at 3. The BIA therefore concluded that Mr. Manzano-Anorve "ha[d] not established that reopening is warranted." *Id.*

Before us, Mr. Manzano-Anorve fails to explain how the BIA abused its discretion in concluding that reopening was not warranted. We agree with the BIA

and the government that Mr. Manzano-Anorve did not present any new evidence with his motion to reopen. Instead, he simply attached to his motion the declaration of Dr. Smith that was already in the record. *Compare* R. at 265-85 *with id*. at 37-57.

The BIA also recounted Mr. Manzano-Anorve's arguments in support of his motion—"the [IJ] and Board erred in determining that members of the Anorve Family in Mexico was not a particular social group; the [IJ] erred in discounting the expert testimony provided at the hearing; and . . . the Board erred in not remanding the case back to the [IJ]." *Id.* at 3 (citations and internal quotation marks omitted). But the BIA explained that these arguments did "not constitute new and previously unavailable evidence, and instead should have been raised in a motion to reconsider." *Id.* The BIA further explained that "to the extent [Mr. Manzano-Anorve] seeks reconsideration, the motion is untimely" because it was filed past the thirty-day deadline for filing a motion to reconsider. *Id.*

Again, Mr. Manzano-Anorve fails to address how the BIA abused its discretion in characterizing his arguments as ones that should have been raised in a motion to reconsider or to challenge the BIA's conclusion that any arguments seeking reconsideration were untimely. We agree with the BIA and the government that the arguments in Mr. Manzano-Anorve's motion to reopen are more properly characterized as seeking reconsideration of the agency's previous decisions as opposed to presenting new evidence. "A motion to reconsider asserts that at the time of the Board's previous decision an error was made. It questions the Board's decision for alleged errors in appraising the facts and the law." *Matter of Cerna*,

20 I. & N. Dec. at 402 (internal quotation marks omitted). That is exactly what Mr. Manzano-Anorve's motion did—it alleged errors in the BIA's original decision. *See id*. ("The very nature of a motion to reconsider is that the original decision was defective in some regard.").

The BIA also correctly concluded that to the extent the motion sought reconsideration, it was untimely. A motion to reconsider "must be filed within 30 days of the date of entry of a final administrative order of removal." 8 U.S.C. § 1229a(c)(6)(B). The BIA entered its final order of removal on April 3, 2020, which meant any motion to reconsider was due no later than May 4, 2020. But Mr. Manzano-Anorve did not file his motion until July 2, 2020.

Finally, we note that because Mr. Manzano-Anorve did not file a petition for review from the BIA's April 2020 decision affirming the IJ's denial of Mr. Manzano-Anorve's requests for withholding of removal and CAT protection, we lack jurisdiction to consider the arguments he is raising in his brief challenging that decision. *See Infanzon v. Ashcroft*, 386 F.3d 1359, 1361 (10th Cir. 2004) (explaining that this court lacked jurisdiction to review a BIA order when the petitioner did not timely file a petition for review from that order within thirty days as required by 8 U.S.C. § 1252(b)(1)). The only order that is properly before us for review is the BIA's order denying the motion to reopen.

III. Conclusion

The BIA did not abuse its discretion in denying the motion to reopen where: (1) no new evidence was presented to support reopening the case; and (2) the

arguments were in the nature of a motion to reconsider, but the motion was not filed within the timeframe for filing a motion to reconsider. Accordingly, we deny the petition for review.

Entered for the Court

Gregory A. Phillips
Circuit Judge