

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

August 22, 2023

Christopher M. Wolpert
Clerk of Court

CARLOS GARCIA-FERMEN,

Petitioner,

v.

MERRICK B. GARLAND, United States
Attorney General,

Respondent.

No. 23-9540
(Petition for Review)

ORDER AND JUDGMENT*

Before **MATHESON**, **BRISCOE**, and **EID**, Circuit Judges.

Carlos Garcia-Fermen, a native and citizen of El Salvador, entered the United States in 2016 with his wife and daughter. After the government sought their removal, he applied

* 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 This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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.

for asylum, withholding of removal, and protection under the Convention Against Torture (“CAT”),¹ leading to the following procedural chronology:

- April 18, 2019 - The immigration judge (“IJ”) denied the applications. AR 156-66.
- March 31, 2022 - The Board of Immigration Appeals (“BIA”) affirmed. AR 96-99.
- May 2, 2022 - Deadline for Mr. Garcia-Fermen to file a petition for review of the BIA’s March 31, 2022 order. 8 U.S.C. §§ 1252(a)(5); 1252(b)(1) (petition for review is due within 30 days of the final order of removal). He did not do so.
- June 21, 2022 - Mr. Garcia-Fermen moved to reopen proceedings based on new evidence. AR 13-93.
- November 17, 2022 - The BIA denied Mr. Garcia-Fermen’s motion to reopen. AR 2-4.
- December 13, 2022 - Mr. Garcia-Fermen filed the instant petition for review in the Ninth Circuit.
- April 24, 2023 - The Ninth Circuit transferred this matter to the Tenth Circuit.

Mr. Garcia-Fermen timely petitioned for review of the BIA’s November 17, 2022 denial of his motion to reopen.² But he did not timely petition for review of the BIA’s March 31, 2022 denial of his applications for asylum, withholding of removal, and CAT protection. We lack jurisdiction to address those matters. *See Infanzon v.*

¹ Mr. Garcia-Fermen applied on behalf of himself and his wife and minor child. Our references to him in this opinion apply to the family.

² Because Mr. Garcia-Fermen appears pro se, “we liberally construe his filings, but we will not act as his advocate.” *James v. Wadas*, 724 F.3d 1312, 1315 (10th Cir. 2013).

Ashcroft, 386 F.3d 1359, 1361 (10th Cir. 2004) (noting lack of jurisdiction when petitioner failed to timely petition from the BIA’s order).

We have jurisdiction under 8 U.S.C. § 1252(a) to review the BIA’s denial of Mr. Garcia-Fermen’s motion to reopen as “a final, separately appealable order.” *Id.* at 1361. But Mr. Garcia-Fermen fails to address that issue in his brief, focusing instead on the merits of the underlying applications, and therefore has waived review of whether the BIA should have reopened the proceedings. *See Platt v. Winnebago Indus., Inc.*, 960 F.3d 1264, 1271 (10th Cir. 2020) (failure to raise an issue in an opening brief waives that issue).

Based on the foregoing, we dismiss in part and otherwise deny the petition.

Entered for the Court,

Scott M. Matheson, Jr.
Circuit Judge