

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 19-14979
Non-Argument Calendar

Agency No. A076-243-239

CHITURU C. UMESI,

Petitioner,

versus

U.S. ATTORNEY GENERAL,

Respondent.

Petition for Review of a Decision of the
Board of Immigration Appeals

(July 24, 2020)

Before JORDAN, GRANT and LUCK, Circuit Judges.

PER CURIAM:

Chituru Umesi seeks review of the Board of Immigration Appeals' affirmance of an Immigration Judge's denial of his motion to *sua sponte* reopen his removal proceedings. Because we lack jurisdiction to review the BIA's decision not to exercise its *sua sponte* authority to reopen removal proceedings, we dismiss Mr. Umesi's petition.

I

Mr. Umesi, a citizen and native of Nigeria, entered the United States in March of 1993 as a non-immigrant visitor. Mr. Umesi had authorization to remain in the country until September of 1993, but he stayed in the United States beyond that date. The former Immigration and Naturalization Service commenced removal proceedings against him on June 24, 2003 through the issuance of a Notice to Appear. The Notice alleged that Mr. Umesi was removable under § 237(a)(1)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1227(a)(1)(B), for remaining in the United States for longer than permitted.

At a hearing before the IJ on September 25, 2007, Mr. Umesi requested and was granted voluntary departure in lieu of removal. He was ordered to leave the United States no later than January 23, 2008. He did not, however, depart the country as ordered.

About 10 years later, on January 26, 2018, Mr. Umesi filed a motion to reopen his removal proceedings *sua sponte*. He sought an adjustment of status pursuant to

an I-130 petition based on his relationship with his brother, a United States citizen. He also argued that exceptional circumstances warranted a *sua sponte* reopening of his removal proceedings, including that he had lived in the United States for 24 years, he had lived with his wife for 13 years, and he and his wife both had medical conditions that would be negatively impacted by his removal.

On March 22, 2018, the IJ denied Mr. Umesi's motion, finding that his circumstances were not "truly exceptional" such that *sua sponte* reopening was warranted. On November 15, 2019, the BIA summarily affirmed the IJ's ruling.

Mr. Umesi now petitions for review of the BIA's decision.

II

We review our own jurisdiction *de novo*. See *Chao Lin v. U.S. Att'y Gen.*, 677 F.3d 1043, 1045 (11th Cir. 2012). "When the BIA summarily affirms the IJ's decision without an opinion, the IJ's decision becomes the final removal order." *Alim v. Gonzales*, 446 F.3d 1239, 1254 (11th Cir. 2006) (citation and internal quotation marks omitted).

III

Under the INA, an alien may file one statutory motion to reopen removal proceedings, which generally must be filed within 90 days of the entry of the final order of removal. See *Butka v. U.S. Att'y Gen.*, 827 F.3d 1278, 1283 (11th Cir. 2016). In addition, an IJ or the BIA may reopen removal proceedings *sua sponte* at

any time. *See Bing Quan Lin v. U.S. Att’y Gen.*, 881 F.3d 860, 872 (11th Cir. 2018) (citing 8 C.F.R. §§1003.2(a), 1003.23(b)(1)). Reopening removal proceedings *sua sponte* is “an extraordinary remedy reserved for truly exceptional situations.” *In re G—D—*, 22 I&N Dec. 1132, 1134 (BIA 1999). In his motion to reopen, Mr. Umesi acknowledged that his motion was untimely under the INA and requested that the IJ reopen his removal proceedings *sua sponte*.

We generally lack jurisdiction to review a decision of an IJ or the BIA declining to exercise their *sua sponte* reopening authority. *See Lenis v. U.S. Att’y Gen.*, 525 F.3d 1291, 1294 (2008) (“[T]he BIA’s decision whether to reopen proceedings on its own motion pursuant to 8 C.F.R. § 1003.2(a) is committed to agency discretion by law. We are, therefore, constrained to conclude that we lack jurisdiction to review the BIA’s decision in this case.”). This is because “under the Administrative Procedure Act, judicial review is not available when agency action is committed to agency discretion by law.” *Id.* at 1293 (citation and internal quotation marks omitted). We do, however, have jurisdiction to review constitutional claims and questions of law related to the BIA’s discretionary decisions. *See Bing Quan Lin*, 881 F.3d at 871.

Here, Mr. Umesi argues that the IJ abused its discretion in finding that he did not satisfy the exceptional circumstance requirement. *See* Petition at 16–21. But he does not raise any constitutional claims or questions of law. *See id.* We therefore

lack jurisdiction to entertain this petition. Accordingly, we dismiss Mr. Umesi's petition for review.

PETITION DISMISSED.