

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

FEB 24 2022

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

YUMIN XUAN,

Petitioner,

v.

MERRICK B. GARLAND, Attorney
General,

Respondent.

No. 19-71731

Agency No. A096-494-474

MEMORANDUM*

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

Submitted February 15, 2022**

Before: FERNANDEZ, TASHIMA, and FRIEDLAND, Circuit Judges.

Yumin Xuan, a native and citizen of China, petitions for review of the Board of Immigration Appeals (“BIA”) order denying her motion to reopen removal proceedings to apply for adjustment of status. Our jurisdiction is governed by 8 U.S.C. § 1252. We dismiss the petition for review.

* 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).

We lack jurisdiction to review the BIA's determination not to reopen removal proceedings where Xuan does not raise a colorable legal or constitutional error underlying the BIA's decision that would invoke our jurisdiction. *See Lona v. Barr*, 958 F.3d 1225, 1227 (9th Cir. 2020) (the court retains jurisdiction to review BIA decisions denying sua sponte reopening for the limited purpose of reviewing the reasoning behind the decision for legal or constitutional error). We lack jurisdiction to consider Xuan's contentions as to equitable estoppel that she raises for the first time in her opening brief because she did not raise them to the BIA. *See Barron v. Ashcroft*, 358 F.3d 674, 677-78 (9th Cir. 2004) (court lacks jurisdiction to review claims not presented to the agency). To the extent Xuan now contends her motion to reopen qualifies for an exception to the statutory requirement of timely filing, we lack jurisdiction to consider this unexhausted issue. *See id.*

The temporary stay of removal remains in place until issuance of the mandate.

PETITION FOR REVIEW DISMISSED.