

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

AUG 25 2021

FOR THE NINTH CIRCUIT

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

ROBERTO GERMAN TEPOZTECO-
RIOS,

Petitioner,

v.

MERRICK B. GARLAND, Attorney
General,

Respondent.

No. 20-71043

Agency No. A205-712-052

MEMORANDUM*

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

Submitted August 17, 2021**

Before: SILVERMAN, CHRISTEN, and LEE, Circuit Judges.

Roberto German Tepozteco-Rios, a native and citizen of Mexico, petitions pro se for review of the Board of Immigration Appeals' ("BIA") order denying his motion to reopen and remand. Our jurisdiction is governed by 8 U.S.C. § 1252.

We review the BIA's denial of a motion to reopen and remand for abuse of

* 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).

discretion. *Movsisian v. Ashcroft*, 395 F.3d 1095, 1098 (9th Cir. 2005). We deny in part and dismiss in part the petition for review.

In his opening brief, Tepozteco-Rios does not challenge the BIA's denial of his motion to reopen and remand based on his non-immigrant U visa petition. *See Lopez-Vasquez v. Holder*, 706 F.3d 1072, 1079-80 (9th Cir. 2013) (issues not specifically raised and argued in a party's opening brief are waived).

The BIA did not abuse its discretion in denying Tepozteco-Rios's untimely and number barred motion to reopen and remand based on changed country conditions where he failed to establish prima facie eligibility for relief. *See* 8 C.F.R. § 1003.2(c)(2), (3)(ii); *Ramirez-Munoz v. Lynch*, 816 F.3d 1226, 1228 (9th Cir. 2016) (the BIA may deny a motion to reopen for failure to establish prima facie eligibility for the relief sought); *see also INS v. Elias-Zacarias*, 502 U.S. 478, 483 (1992) (an applicant "must provide *some* evidence of [motive], direct or circumstantial"); *Garcia-Milian v. Holder*, 755 F.3d 1026, 1033-35 (9th Cir. 2014) (concluding that petitioner did not establish the necessary "state action" for CAT relief).

We lack jurisdiction to review the agency's determination not to reopen proceedings sua sponte. *See Mejia-Hernandez v. Holder*, 633 F.3d 818, 823-824 (9th Cir. 2011); *cf. Bonilla v. Lynch*, 840 F.3d 575, 588 (9th Cir. 2016) ("[T]his court has jurisdiction to review Board decisions denying *sua sponte* reopening for

the limited purpose of reviewing the reasoning behind the decisions for legal or constitutional error.”).

We reject as unsupported by the record Tepozteco-Rios’s contention that the agency ignored evidence or otherwise erred in its analysis of his motion.

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

PETITION FOR REVIEW DENIED in part; DISMISSED in part.