

FILED

NOT FOR PUBLICATION

FEB 28 2023

UNITED STATES COURT OF APPEALS

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

FOR THE NINTH CIRCUIT

PAOLA CORTEZ CUEVAS,

Petitioner,

v.

MERRICK B. GARLAND, Attorney
General,

Respondent.

No. 20-72456

Agency No. A208-117-672

MEMORANDUM*

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

Submitted February 17, 2023**
Pasadena, California

Before: TASHIMA, HURWITZ, and BADE, Circuit Judges.

Paola Cortez Cuevas, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' ("BIA") order dismissing her appeal from an immigration judge's ("IJ") decision denying her request for a continuance and ordering her removed. We have jurisdiction under 8 U.S.C. § 1252. We review

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2)(C).

for abuse of discretion the denial of a continuance. *Ahmed v. Holder*, 569 F.3d 1009, 1012 (9th Cir. 2009). We review de novo questions of law and claims of due process violations in immigration proceedings, *Lopez-Urenda v. Ashcroft*, 345 F.3d 788, 791 (9th Cir. 2003), and whether a petitioner's statutory right to counsel was violated, *Mendoza-Mazariegos v. Mukasey*, 509 F.3d 1074, 1079 (9th Cir. 2007). We deny the petition for review.

1. The agency did not abuse its discretion in denying Cortez Cuevas' request for a further continuance because she did not demonstrate good cause. *See* 8 C.F.R. § 1003.29; *Ahmed*, 569 F.3d at 1012 (listing factors to be considered in determining whether the denial of a continuance constitutes an abuse of discretion). “Although the BIA did not expressly address the *Ahmed* factors, the IJ sufficiently outlined why good cause [for a continuance] did not exist.” *Hui Ran Mu v. Barr*, 936 F.3d 929, 936 (9th Cir. 2019). Cortez Cuevas’ contention that the agency erred by failing to assess factors specific to her adjustment-of-status application fails because she failed to provide evidence of a pending application like “copies of relevant submissions in the collateral proceeding [and] supporting affidavits.” *Matter of L-A-B-R-*, 27 I. & N. Dec. 405, 418 (A.G. 2018).

2. The BIA did not err in concluding that the IJ did not violate Cortez Cuevas' right to due process by proceeding in the absence of a waiver of counsel and by failing to inform her of possible adjustment of status relief. “When a

petitioner does not waive the right to counsel, IJs must provide . . . reasonable time to locate counsel and permit counsel to prepare for the hearing.” *Arrey v. Barr*, 916 F.3d 1149, 1158 (9th Cir. 2019) (internal quotation marks and citation omitted). The IJ repeatedly gave Cortez Cuevas notice of the right to counsel during the three-year proceedings and provided her with a list of legal service providers.

Cortez Cuevas also contends that she was denied due process because the IJ did not discuss a family-sponsored visa with her prior to her final hearing on July 17, 2018. But no such duty was triggered because her daughter was younger than twenty-one before the final hearing, making her too young to sponsor Cortez Cuevas for a family-based visa. *See* 8 U.S.C. § 1151(b)(2)(A)(i). IJs need not “speculate about the possibility of anticipated changes of circumstances.” *United States v. Moriel-Luna*, 585 F.3d 1191, 1197 (9th Cir. 2009). Moreover, Cortez Cuevas was already aware of her potential eligibility so there was no prejudice from the IJ’s asserted failure to inform. *See Lata v. INS*, 204 F.3d 1241, 1246 (9th Cir. 2000).

3. Cortez Cuevas’ contention that the IJ lacked jurisdiction over her proceedings is foreclosed by *United States v. Bastide-Hernandez*, 39 F.4th 1187, 1188, 1193 (9th Cir. 2022) (en banc) (holding that lack of hearing information in notice to appear does not deprive immigration court of subject

matter jurisdiction, and 8 C.F.R. § 1003.14(a) is satisfied when later notice provides hearing information).

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

PETITION FOR REVIEW DENIED.