NOT FOR PUBLICATION

FILED

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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

SANTIAGO CLAUDIO-GUADARRAMA, Petitioner, v. MERRICK B. GARLAND, Attorney General, Respondent.	No. 21-117 Agency No. A095-807-985 MEMORANDUM*

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

Submitted March 27, 2024**
Pasadena, California

Before: GRABER, IKUTA, and FORREST, Circuit Judges.

Petitioner Santiago Claudio-Guadarrama, a native and citizen of Mexico, seeks review of the Board of Immigration Appeals' ("BIA") denial of his motion to reopen removal proceedings. Reviewing the BIA's denial for abuse of discretion,

* 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).

Cano-Merida v. INS, 311 F.3d 960, 964 (9th Cir. 2002), we deny the petition.

The BIA permissibly concluded that Petitioner's motion to reopen was untimely. Petitioner filed the motion nearly four years after the BIA dismissed his appeal, well beyond the statutorily required 90-day period. See 8 C.F.R. § 1003.2(c)(2). Petitioner contends that his motion falls under the exception for changed circumstances in the country of nationality, described in 8 C.F.R. § 1003.2(c)(3)(ii) and 8 U.S.C. § 1229a(c)(7)(C)(ii), and is therefore timely. But, as the BIA noted, Petitioner cites circumstances that existed at or before the time of his merits hearing in September 2015.

Petitioner asserts that his cousin[1] was kidnapped and murdered in 2013, but that unfortunate event occurred before the 2015 merits hearing. Petitioner has not explained why he could not have presented the 2013 events during his merits hearing. Accordingly, Petitioner failed to show that the evidence of the 2013 kidnapping and murder of his cousin "was not available and could not have been discovered or presented at the previous hearing." 8 C.F.R. § 1003.2(c)(3)(ii); see also Najmabadi v. Holder, 597 F.3d 983, 986 (9th Cir. 2010) (noting that "failure to introduce previously unavailable, material evidence," is one of "at least" three permissible independent grounds for denial of a motion to reopen).

[1] The BIA refers to Petitioner's cousin as his uncle.

Similarly, Petitioner cites his affiliation with "the Claudio family" and the "growing and continuing violence in Mexico[.]" But those conditions are not "'qualitatively different' from the evidence presented at the previous hearing"; nor does the evidence show an "individualized threat" of persecution against Petitioner due to his affiliation. Najmabadi, 597 F.3d at 987, 992 (emphasis omitted) (citations omitted).

PETITION DENIED.