NOT FOR PUBLICATION

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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ANJU GHIMIRE, Petitioner, v. MERRICK B. GARLAND, Attorney General, Respondent.	No. 22-1126 Agency No. A089-876-799 MEMORANDUM[*]

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

Submitted November 13, 2023[**]
Pasadena, California

Before: RAWLINSON, CLIFTON, and HURWITZ, Circuit Judges.

Anju Ghimire (Ghimire), a native and citizen of Nepal, petitions for review of a decision of the Board of Immigration Appeals (BIA) denying her second motion to reopen her immigration proceedings.

[*] 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 have jurisdiction to consider [Ghimire's] petition to review the denial of [her] second motion to reopen under 8 U.S.C. § 1252. We review the BIA's denial for abuse of discretion, and reverse only if the BIA's decision was arbitrary, irrational, or contrary to law." *Ayanian v. Garland*, 64 F.4th 1074, 1080 (9th Cir. 2023) (citations and internal quotation marks omitted).

"Motions to reopen are disfavored due to the strong public interest in bringing litigation to a close." *Id.* (citation and internal quotation marks omitted). In general, a noncitizen "may file one motion to reopen proceedings, and must file it within 90 days of the date of entry of a final administrative order of removal." *Id.* (citations and internal quotation marks omitted).

The BIA did not abuse its discretion when it denied Ghimire's time- and number-barred second motion to reopen. *See id.*; *see also Toufighi v. Mukasey*, 538 F.3d 988, 993 (9th Cir. 2008), *as amended* (concluding that the BIA did not abuse its discretion in denying untimely motion to reopen premised on eligibility for adjustment of status). The BIA also implicitly rejected any basis for equitable tolling when it articulated that "certain exceptions" to the timeliness and number requirements were "not applicable." *See Lona v. Barr*, 958 F.3d 1225, 1232 (9th Cir. 2020) (holding that "the BIA's implicit denial of [the petitioner's] claim for equitable tolling was not arbitrary, irrational, or contrary to law") (citation and internal quotation marks omitted).

We lack jurisdiction to review the BIA's denial of *sua sponte* reopening. "We may only exercise jurisdiction over BIA decisions denying sua sponte reopening for the limited purpose of reviewing the reasoning behind the decisions for legal or constitutional error. . . ." *Cui v. Garland*, 13 F.4th 991, 1001 (9th Cir. 2021) (citation and internal quotation marks omitted). "Because the BIA's decision evinces no misunderstanding of the agency's broad discretion to grant or deny sua sponte relief—that is, the BIA exercised its authority against the correct legal background—there is nothing left for us to review." *Lona*, 958 F.3d at 1235 (citation, alteration, and internal quotation marks omitted).

PETITION FOR REVIEW DENIED IN PART and DISMISSED IN PART.