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DEC 7 2023

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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

AGHAVNI CINAPIAN, Petitioner, v. MERRICK B. GARLAND, Attorney General, Respondent.	No. 23-190 Agency No. A075-678-173 MEMORANDUM*

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

Submitted December 5, 2023**
Pasadena, California

Before: CALLAHAN, R. NELSON, and BADE, Circuit Judges.

Aghavni Cinapian is a native and citizen of Armenia. She petitions for review of a decision by the Board of Immigration Appeals ("BIA"). The BIA dismissed her appeal of an Immigration Judge's ("IJ") decision that she filed a frivolous asylum

* 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).

claim and was barred from obtaining any benefits under the Immigration and Nationality Act ("INA"). We have jurisdiction to review under 8 U.S.C. § 1252. We review the agency's legal conclusions *de novo* and its factual findings for substantial evidence. *Davila v. Barr*, 968 F.3d 1136, 1141 (9th Cir. 2020). We deny the petition.

1. The BIA applied the proper legal framework in finding that Petitioner's asylum application was frivolous. To reach a frivolous finding, (1) an asylum applicant must have "adequate notice of the consequences of filing a frivolous application[;]" (2) the IJ or BIA must make a finding that the applicant knowingly filed a frivolous application; (3) the finding "must be supported by a preponderance of the evidence[;]" and (4) the applicant must be given ample opportunity to account for fabrications in her application. *Ahir v. Mukasey*, 527 F.3d 912, 916–19 (9th Cir. 2008) (citing *Matter of Y-L-*, 24 I. & N. Dec. 151 (BIA 2007)).

Petitioner claims that the agency did not properly warn her of the consequences of filing a frivolous application, but her brief to the BIA did not contain this argument. Because Petitioner did not raise this issue to the BIA, she failed to exhaust her administrative remedies. *See Barron v. Ashcroft,* 358 F.3d 674, 676–78 (9th Cir. 2004). Even if she had exhausted the issue, substantial evidence supports that she was given proper notice. Petitioner's asylum application included

a warning, an IJ gave her an oral warning, and Petitioner testified that she understood the "pros and cons" of filing a fabricated application.

Substantial evidence also supports the BIA's finding that Petitioner knowingly filed a frivolous application. Further, Petitioner waived any argument to the contrary by failing to challenge the finding in her opening brief. *See Rizk v. Holder*, 629 F.3d 1083, 1091 n.3 (9th Cir. 2011).

Petitioner asserts that she was not given sufficient opportunity to account for discrepancies in her application. She claims that she was obliged to falsify her application because of her husband's demands. But the BIA noted that Petitioner's husband died in 2013, and Petitioner had more than five years after his death to disclose the fabrications. When asked why she continued her false claim after her husband's death, she admitted she could have told the truth but that she was afraid. The IJ permitted Petitioner to explain the discrepancies in her application. Thus, sufficient evidence supports the BIA's finding that she had sufficient opportunity to account for the discrepancies in her application.

2. Petitioner asserts that the government violated her due process rights when the IJ limited her from presenting testimony to explain why she presented a false application. Due process requires "a full and fair hearing," which "includes a reasonable opportunity to present and rebut evidence." *Grigoryan* v. *Barr,* 959 F.3d 1233, 1240 (9th Cir. 2020) (citing *Colmenar v. INS*, 210 F.3d 967, 971 (9th Cir.

2000)). But an IJ has discretion to conduct and control immigration proceedings, including the authority to admit relevant and probative evidence. *See* 8 U.S.C. § 1229a(b)(1).

Here, the IJ allowed Petitioner to testify that she falsified her application due to her husband's demands, but sustained the government's objections to a line of questioning directed towards Petitioner's son about whether she "always" listened to her husband and about the cultural tradition of female submission. Even if Petitioner's testimony was improperly limited, she has not shown prejudice. *See Colmenar*, 210 F.3d at 971 (stating that a petitioner must show prejudice to succeed on a due process claim). The IJ understood her argument that she was obliged to falsify the application but found it unpersuasive given the many years she had to disclose the fabrication after her husband's death.

The petition for review is **DENIED.**