

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

May 1, 2023

Christopher M. Wolpert
Clerk of Court

MARIA SOLEDAD MARTINEZ-TAPIA,

Petitioner,

v.

MERRICK B. GARLAND,
United States Attorney General,

Respondent.

No. 22-9539
(Petition for Review)

ORDER AND JUDGMENT*

Before **TYMKOVICH, BALDOCK, and McHUGH**, Circuit Judges.

Maria Soledad Martinez-Tapia seeks review of the Board of Administrative Appeals' (BIA) decision denying her motion to reconsider its previous decision denying her motion to remand her application for cancellation of removal to the immigration judge (IJ). Exercising jurisdiction under 8 U.S.C. § 1252(a)(1), we deny the petition.

* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

I. Background

This is Petitioner’s second appeal to this court involving essentially the same issue: the agency’s refusal to revisit its determination that she is ineligible for cancellation of removal under 8 U.S.C. § 1229b(b)(1)(D) and *In re Isidro-Zamorano*, 25 I. & N. Dec. 829 (B.I.A. 2012), in light of our decision in *Martinez-Perez v. Barr*, 947 F.3d 1273 (10th Cir. 2020). The background regarding her cancellation application, the IJ’s ineligibility determination, her unsuccessful motion to reopen and related BIA appeal, and the motion she filed during that appeal asking the BIA to remand the matter to the IJ, is set forth in our decision in her first petition for review in this court, and we do not repeat it here. *See Martinez-Tapia v. Garland (Martinez-Tapia I)*, No. 20-9610, 2021 WL 4813413, at *1-2 (10th Cir. Oct. 15, 2021).

In *Martinez-Tapia I*, we held that Petitioner’s motion to remand was a motion to reconsider the IJ’s ineligibility determination, and we denied her petition to review the BIA’s denial of that motion. *See id.* at *2-4. We held that the BIA applied the correct legal standard and did not abuse its discretion in its application of *Martinez-Perez* to Petitioner’s situation. *Id.* at *4.

While *Martinez-Tapia I* was pending, Petitioner filed another motion to reconsider with the BIA—the motion at issue here—raising the same arguments she raised in *Martinez-Tapia I*. *Compare R.*, vol. I at 16-20 (Mot. to Reconsider), *with* Pet’r Opening Br. at 35-53, *Martinez-Tapia v. Garland*, No. 20-9610 (10th Cir.

Jan. 28, 2021).¹ The BIA waited to rule on that motion until after we resolved the petition for review in *Martinez-Tapia I*. The BIA then denied the motion, reiterating its reasons for denying Petitioner’s first motion to reconsider and concluding that reconsideration was not warranted in light of our decision in *Martinez-Tapia I*. Petitioner now seeks review of that order.

II. Discussion

As an initial matter, we note two limitations on the scope of our review. First, in *Martinez-Tapia I*, we rejected Petitioner’s argument that the BIA abused its discretion in its application of *Martinez-Perez* to her situation. *See* 2021 WL 4813413, at *4. We will not revisit that issue. *See Park Lake Res. Ltd. Liab. Co. v. U.S. Dep’t of Agric.*, 378 F.3d 1132, 1136 (10th Cir. 2004). Second, as we explained in *Martinez-Tapia I*, we do not have jurisdiction to consider Petitioner’s challenges to the IJ’s denial of her application for cancellation of removal. *See* 2021 WL 4813413, at *2. Accordingly, we review only her arguments that challenge the BIA’s denial of her second motion to reconsider without also challenging the agency’s ineligibility determination. *See id.*

“We review the BIA’s decision on a motion to reconsider for an abuse of discretion.” *Rodas-Orellana v. Holder*, 780 F.3d 982, 990 (10th Cir. 2015).

¹ We may take judicial notice of Ms. Martinez-Tapia’s brief in the prior appeal. *See United States v. Ahidley*, 486 F.3d 1184, 1192 n.5 (10th Cir. 2007) (“[W]e may exercise our discretion to take judicial notice of publicly-filed records in our court and certain other courts concerning matters that bear directly upon the disposition of the case at hand.”).

“The BIA abuses its discretion when its decision provides no rational explanation, inexplicably departs from established policies, is devoid of any reasoning, or contains only summary or conclusory statements.” *Id.* (internal quotation marks omitted). It also abuses its discretion when it makes a legal error. *Qiu v. Sessions*, 870 F.3d 1200, 1202 (10th Cir. 2017).

The purpose of a motion to reconsider is to allow the BIA to reexamine the facts or law it allegedly overlooked in its original decision. *Sosa-Valenzuela v. Holder*, 692 F.3d 1103, 1110 (10th Cir. 2012); *see* 8 C.F.R. § 1003.2(b)(1) (providing that a motion to reconsider must specify “the errors of fact or law in the prior [BIA] decision”). Petitioner’s second motion to reconsider was a rehash of her first motion and of the issues she raised and that we rejected in *Martinez-Tapia I*. The BIA denied it for the same reasons it denied the first motion and based on *Martinez-Tapia I*. In other words, it concluded reconsideration was not warranted because it found no error of fact or law in its previous decision. We find no abuse of discretion in that determination.² *See Ahmed v. Ashcroft*, 388 F.3d 247, 249 (7th Cir. 2004) (“A motion [for reconsideration] that merely republishes the reasons that had failed

² In the only portion of her brief that does not parrot the arguments she made in her first motion to reconsider and in *Martinez-Tapia I*, Petitioner cites an unpublished BIA decision and two precedential BIA decisions that pre-date *Isidro-Zamorano*, *see Matter of Morales*, 25 I. & N. Dec. 186 (B.I.A. 2010), and *Matter of Portillo-Gutierrez*, 25 I. & N. Dec. 148 (B.I.A. 2009). But she did not rely on those decisions in her second motion to reconsider, and in any event, they do not establish that the BIA abused its discretion in denying the second motion for reconsideration.

to convince the tribunal in the first place gives the tribunal no reason to change its mind.”); *In re O-S-G-*, 24 I. & N. Dec. 56, 58 (B.I.A. 2006) (“[A] motion to reconsider is not a process by which a party may submit, in essence, the same brief presented on appeal and seek reconsideration by generally alleging error in the prior [BIA] decision.”); *Matter of Anselmo*, 20 I. & N. Dec. 25, 31 (B.I.A. 1989) (recognizing that the BIA generally follows a circuit court’s precedent in cases arising in that circuit).

III. Conclusion

We deny the petition for review.

Entered for the Court

Timothy M. Tymkovich
Circuit Judge