FILED
United States Court of Appeals
Tenth Circuit

July 8, 2025

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

ENRIQUE HERRERA-RAMIREZ,

Petitioner,

v.

PAMELA J. BONDI, United States Attorney General,*

Respondent.

No. 24-9549
(Petition for Review)

ORDER AND JUDGMENT**

Before **TYMKOVICH**, **BACHARACH**, and **EID**, Circuit Judges.

Petitioner Enrique Herrera-Ramirez, a native and citizen of Mexico, petitions this court for review of an order by the Board of Immigration Appeals (BIA) denying

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* On February 5, 2025, Pamela J. Bondi became Attorney General of the United States. Consequently, her name has been substituted as Respondent, per Fed. R. App. P. 43(c)(2).

** After examining the briefs and appellate record, this panel has determined unanimously to honor the parties' request for a decision on the briefs without oral argument. *See* Fed. R. App. P. 34(f); 10th Cir. R. 34.1(G). The case is therefore 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 This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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.

his motion to reopen his removal proceedings. Exercising jurisdiction under 8 U.S.C. § 1252, we deny the petition.

I

Petitioner was born in Mexico on January 14, 1990. He entered the United States in August 2008 without being admitted or inspected.

On June 24, 2012, the Department of Homeland Security initiated removal proceedings against Petitioner by issuing a Notice to Appear (NTA) charging him with removability under § 212(a)(6)(A)(i) of the Immigration and Nationality Act (INA), codified at 8 U.S.C. § 1182(a)(6)(A)(i).

In August 2017, Petitioner appeared before an immigration judge (IJ), admitted to the allegations in the NTA,[1] and filed an application for cancellation of removal and adjustment of status.

Petitioner appeared again before an IJ for an individual hearing in August 2019. Both Petitioner and his wife testified. Petitioner's attorney argued that Petitioner's removal would result in exceptional and extremely unusual hardship to Petitioner's minor son for three reasons: (1) financial hardship due to the loss of Petitioner's income; (2) "some unusual hardship to [the son] in trying to obtain medical services in Mexico" for an eye condition; and (3) "mov[ing] into an [educational and cultural] environment" requiring the son to speak and understand

[1] The NTA alleged that Petitioner came to the United States in 1998. At the hearing before the IJ on August 28, 2019, Petitioner changed his admission and agreed that he came to the United States in August 2008 rather than August 1998.

Spanish, since "he's been in an all English program for the last two years." AR at 306.

At the conclusion of the hearing, the IJ issued an oral decision denying Petitioner's application for cancellation of removal. The IJ concluded Petitioner failed to establish his removal would result in exceptional and extremely unusual hardship to a qualifying relative. The IJ found Petitioner fathered both of his children "after he entered removal proceedings," that his "spouse ha[d] no status in the United States," and that "if it became too hard" for his spouse "without [Petitioner,] she would move to Mexico to be with [him], taking their two children with her." *Id.* at 209-10. The IJ also found that "[m]edically, the children ha[d] very few problems." *Id.* at 210. The IJ found that although Petitioner's son was "waiting on receiving glasses to see if glasses w[ould] correct a lazy eye that he [wa]s experiencing," Petitioner and his wife "provided no medical records or other documents indicating that [there were] any significant concerns with [the son's] eyes, other than that one eye does not always stay fully aligned with the other." *Id.* The IJ noted that, generally speaking, "chronic medical conditions of . . . qualifying relatives that are under control . . . do not give rise to exceptional and extremely unusual hardship, absent additional evidence of hardship." *Id.* The IJ concluded Petitioner's son "present[ed] with a common type of medical issue that [wa]s under control, and . . . c[ould] be treated in Mexico if the family decide[d] to stay united by moving to Mexico with [Petitioner]." *Id.* The IJ also noted Petitioner "d[id] not

provide his children with medical insurance as they are all on a government-funded program." *Id.* at 210-11.

Petitioner appealed to the BIA. On April 8, 2024, the BIA issued a summary order affirming the IJ's denial of Petitioner's cancellation of removal claim and dismissing the appeal. The BIA agreed with the IJ that Petitioner "did not meet his burden of establishing his removal would result in exceptional and extremely unusual hardship to a qualifying relative" under § 240A(b)(1)(D) of the INA, codified at 8 U.S.C. § 1229b(b)(1)(D). AR at 139.

Petitioner filed a motion to reopen the proceedings and remand to the IJ "to allow his application for Cancellation of Removal to be considered in light of new evidence of hardship to his U.S. citizen child." *Id.* at 8. Petitioner alleged in his motion that his son "ha[d] an eye condition called extropia" that "cause[d] on[e] eye to drift to the side, preventing him from focusing both eyes forward, and causing double vision." *Id.* at 9. Petitioner further alleged that his son's "eye doctors . . . recently told him that he may need to have a major surgery in the future." *Id.* Petitioner also alleged that this "condition ha[d] significantly worsened since the 2019 hearing." *Id.* at 10. "The worsening of [this] eye condition . . . and his [son's] need for greater medical and educational measures to treat it," Petitioner argued, "demonstrate[d] that [his son] would . . . suffer even greater hardship if [Petitioner] [wa]s removed than was the case at the time of th[e] hearing." *Id.* Petitioner also argued that if his son ended up needing surgery for his eyes, "it would not be covered by his Medicaid insurance, and" his wife "would not be able to afford the surgery

without [Petitioner's] financial support." *Id.* Lastly, Petitioner argued his son's "condition would also worsen seriously if he went to Mexico with" Petitioner because "he would lose his medical insurance," he and his wife "would not be able to afford [the] treatment," and the "[s]chools in Mexico would . . . not be able to provide the special attention he need[ed]." *Id.*

On July 26, 2024, BIA issued a decision denying Petitioner's motion to reopen and remand. The BIA noted in support that Petitioner's "claim . . . that his son m[ight] need surgery which w[ould] not be covered by Medicaid [wa]s not evidence." *Id.* at 4. The BIA further noted that Petitioner "only cite[d] to his wife's statement which itself d[id] not cite to any Medicaid source or objective basis for her statement." *Id.* Thus, the BIA concluded there was no "probative evidence to support [Petitioner's] claim that, if his son needs surgery, it will not be covered by Medicaid." *Id.* The BIA similarly concluded that Petitioner's claims that "his son's worsening vision and educational issues w[ould] cause his son to suffer exceptional and extremely unusual hardship if his son accompanie[d] him to Mexico" were not supported by "meaningful and probative evidence regarding treatment for his son's conditions in Mexico." *Id.* Thus, the BIA denied the motion to reopen "because [Petitioner] ha[d] not carried his burden to present sufficient evidence that would establish a reasonable likelihood that the statutory requirements for cancellation of removal could be met such that the outcome of the proceeding m[ight] be different if proceedings were reopened and remanded to the [IJ]." *Id.* at 5 (internal quotation marks omitted).

Petitioner has now filed a petition for review with this court.

II

Petitioner asserts the BIA erred in denying his motion to reopen. We review the BIA's denial of a motion to reopen for abuse of discretion. *Infanzon v. Ashcroft*, 386 F.3d 1359, 1362 (10th Cir. 2004). "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).

Petitioner begins by arguing that the BIA contravened 8 C.F.R. § 1003.2 when it denied his motion to reopen. Section 1003.2(c)(1) states, in relevant part, that "[a] motion to reopen proceedings shall state new facts that will be proven at a hearing to be held if the motion is granted and shall be supported by affidavits or other evidentiary material." 8 C.F.R. § 1003.2(c)(1). According to Petitioner, he complied with this requirement by submitting an affidavit from his wife, but the BIA effectively discounted that affidavit when it denied his motion.[2]

We reject Petitioner's argument. The plain language of § 1003.2(c)(1) imposes a burden on the person seeking to reopen a BIA proceeding, not the BIA. That is reinforced by the language of § 1003.2(a), which provides, in relevant part, that the BIA "has discretion to deny a motion to reopen even if the moving party has

[2] Petitioner concedes he "was required to have shown prima facie eligibility for cancellation of removal in order to warrant the reopening of his proceedings." Pet'r Opening Br. at 11 (italics omitted).

made out a prima facie case for relief." 8 C.F.R. § 1003.2(a). So the BIA did not violate § 1003.2(c)(1) as alleged by Petitioner.

Petitioner next argues the BIA "applied an incorrect and heightened legal standard in evaluating whether to grant the motion to reopen." Aplt. Br. at 8. According to Petitioner, the BIA effectively required "the evidence [to] show that the proceedings would have had a different outcome, rather than," as it has in past cases, "requiring only an evaluation of whether it would be worthwhile for the facts" to "be further developed in a proceeding before the" IJ. *Id.* Petitioner argues this amounted to an abuse of discretion on the part of the BIA, because it inexplicably departed from the BIA's established policies.

We find no merit to these arguments. As reflected in § 1003.2, a movant seeking to reopen proceedings must "establish[] prima facie eligibility for the underlying relief being sought." *In re L-O-G-*, 21 I. & N. Dec. 413, 414 (BIA 1996). The BIA correctly cited that standard when it denied Petitioner's motion to reopen. AR at 4 ("A motion to reopen must . . . demonstrate[] prima facie eligibility for the relief sought."). The BIA concluded, however, that Petitioner failed to make a prima facie showing, so as to warrant reopening, that his removal would result in exceptional and extremely unusual hardship to his minor son. Although the BIA acknowledged Petitioner submitted a supporting affidavit from his wife alleging their minor son might need future surgery that would not be covered by Medicaid, the BIA concluded the affidavit was insufficient because it failed to "cite to any Medicaid source or objective basis for" its assertions. *Id.* The BIA likewise concluded

Petitioner failed to submit any "meaningful and probative evidence" to support his claim that "his son's worsening vision and educational issues w[ould] cause his son to suffer exceptional and extremely unusual hardship if his son accompanie[d] him to Mexico." *Id.* Our own review of the administrative record confirms the BIA's conclusions. We therefore conclude the BIA did not apply an improper evidentiary standard or otherwise abuse its discretion.

Lastly, Petitioner argues that if the "proper evidentiary standard" is applied to his case, "the record compels the conclusion that [he] *has* established" prima facie eligibility for the relief sought in his motion to reopen. Aplt. Br. at 14 (emphasis in original). For the reasons already discussed, we disagree.

III

The petition for review is denied.

Entered for the Court

Timothy M. Tymkovich
Circuit Judge