[DO NOT PUBLISH]

In the

United States Court of Appeals

For the Eleventh Circuit

No. 22-12929

Non-Argument Calendar

INDIRA NURMATOVNA SHAFIKOVA,

Petitioner,

versus

U.S. ATTORNEY GENERAL,

Respondent.

Petition for Review of a Decision of the
Board of Immigration Appeals
Agency No. A205-105-389

Before ROSENBAUM, JILL PRYOR, and TJOFLAT, Circuit Judges.

PER CURIAM:

Petitioner Indira Nurmatovna Shafikova—a native and citizen of Uzbekistan—appeals the Board of Immigration Appeals' (BIA) decision not to reopen her removal proceedings *sua sponte*. Shafikova argues that the BIA violated her due process rights because it overlooked supplements she submitted describing the conditions in Uzbekistan. Per Shafikova, those supplements support her argument that *Matter of L-E-A-*, 27 I. & N. Dec. 40 (BIA 2017)—which affirmed that family may be a particular social group under 8 U.S.C. § 1158—was an intervening change of law warranting *sua sponte* reopening. For the reasons stated below, Shafikova's petition is dismissed for lack of jurisdiction.

I.

Around May 26, 2010, Shafikova entered the United States with a J-1 visa that authorized her to stay in the country until September 1, 2010. However, she remained in the United States beyond that period without authorization. As a result, Shafikova was charged in a notice to appear as removable under 8 U.S.C. § 1227(a)(1)(B)[1] and was ordered to appear at a hearing

[1] 8 U.S.C. § 1227(a)(1)(B) states: "Any [noncitizen] who is present in the United States in violation of this chapter or any other law of the United States, or whose nonimmigrant visa (or other documentation authorizing admission into the United States as a nonimmigrant) has been revoked under section 1201(i) of this title, is deportable."

before an immigration judge (IJ). At the hearing, Shafikova admitted to these allegations.

Prior to the hearing, Shafikova applied for asylum, withholding of removal, and relief under the United Nations Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT). In a declaration in support of her application, Shafikova stated that her father owned a car service center in Surxondaryo Province, Uzbekistan, but the family later moved to Tashkent, the capital of Uzbekistan.

In 2007, Shafikova's father stated that he was being monitored and he started to spend more time in Surxondaryo running his car service center. Later that year, the car service center was taken away, and her father's property was seized because he allegedly did not pay his taxes. Shafikova's father tried to challenge the seizure in court, but the courts would not consider his case. In February 2008, Shafikova's sister's business was set on fire. The police wrote a report, but the perpetrator was never found.

Shafikova added that she often heard her parents arguing about her father's adverse political views towards the president of Uzbekistan and her father's membership in a group protesting the human rights situation there. In September 2008, Shafikova's father disappeared. The next month, a police officer told Shafikova's mother that he was in prison and could be released only if they paid $25,000. The family had to sell their car and personal belongings, but eventually raised and paid the money. When Shafikova's

father was finally brought back home, he was seriously ill, covered in bruises, and limping.

Shafikova also relayed an incident from June 2009. While waiting for the 11:00 p.m. bus, she was kidnapped at knifepoint by two men in a car. The men put Shafikova in handcuffs, blindfolded her, and drove her to an apartment where they beat and raped her. The next day, the men drove her back and threw her onto the street. Shafikova told no one about what happened except her boyfriend, an American citizen named John. John suggested that it would be better for Shafikova to come to America. In 2010, Shafikova came to America on a student visa and lived with John. In July 2011, John left for Tashkent, and Shafikova has not seen or heard from him since.

At the hearing, the IJ issued an oral decision denying Shafikova's applications for asylum, withholding of removal, and CAT relief. The IJ found that Shafikova failed to provide sufficient evidence to support her claim that she was persecuted on account of a protected ground.

Shafikova timely appealed the IJ's decision to the BIA. The BIA dismissed her appeal because it agreed that Shafikova did not meet her burden of proof to show that she suffered past persecution or that she has a well-founded fear of harm based on a protected ground. The BIA found that there was neither sufficient evidence to show a nexus between the events Shafikova suffered and the Uzbekistani government nor was there a clear probability that

she would suffer torture in Uzbekistan. Shafikova did not seek review of the BIA's decision.

In March 2014, Shafikova timely moved to reopen and reconsider her removal proceedings with country reports and letters in support of her claim of persecution due to her father's political opinion. The BIA denied the motion because Shafikova did not present any new or previously unavailable evidence. It also noted that the motion included several documents that had not been translated as required by 8 C.F.R. § 1003.33 and therefore could not be considered.

In June 2014, Shafikova moved to reconsider. She argued that her attorney supplemented her motion to reconsider with the translated documents. She also noted that the BIA's decision said that the Department of Homeland Security (DHS) had not filed a response to her motion to reopen, but DHS had filed a response on April 4, 2014. The BIA considered the translated documents but denied the motion because nothing in the documents presented any new or previously unavailable evidence likely to change the result of the case.

In June 2017, Shafikova filed an untimely second motion to reopen and reconsider based on the BIA's decision in *Matter of L-E-A-*. Shafikova argued that *Matter of L-E-A-* affirmed that immediate family members may constitute a particular social group and that an applicant must show that a family relationship was at least one central reason for the claimed harm in support of an asylum claim. Shafikova urged the BIA to reopen her proceedings and

remand her case for reconsideration under *Matter of L-E-A-* because she was found to be credible and would have prevailed but for the nexus issues.

Between July 2017 and May 2022, Shafikova supplemented her second motion to reopen and reconsider five times. These supplements largely reiterated her arguments about *Matter of L-E-A-*, and included: (1) documents regarding the death of her father and letters from family members, (2) evidence that she was complying with supervision, (3) country reports of human rights abuses in Uzbekistan, and (4) a statement from a Uzbekistan expert about how family units are targets of political oppression in Uzbekistan.

In August 2022, the BIA denied Shafikova's second motion to reopen and reconsider. The BIA noted Shafikova's first two supplements, but concluded that her second motion was both number barred and untimely under 8 U.S.C. § 1229a(c)(7)(A), (c)(7)(C)(i).[2] It also explained that *Matter of L-E-A-* was not a fundamental change in law that would qualify as an exceptional situation meriting the exercise of its *sua sponte* authority, as it was merely an incremental or incidental change clarifying existing requirements for claims involving particular social groups. The BIA concluded that Shafikova did not establish an exceptional circumstance warranting *sua sponte* reopening of her untimely and number-barred motion and

[2] Under 8 U.S.C. § 1229a(c)(7)(A), a noncitizen "may file one motion to reopen proceedings." Section 1229a(c)(7)(C)(i) provides that "the motion to reopen shall be filed within 90 days of the date of entry of a final administrative order of removal."

therefore denied her motion to reopen. Shafikova timely petitioned for review.

II.

We review *de novo* questions of law and our subject matter jurisdiction. *Ponce Flores v. U.S. Att'y Gen.*, 64 F.4th 1208, 1217 (11th Cir. 2023). "We review the [BIA's] denial of a motion to reopen removal proceedings for abuse of discretion." *Li v. U.S. Att'y Gen.*, 488 F.3d 1371, 1374 (11th Cir. 2007) (per curiam). "This review is limited to determining whether the BIA exercised its discretion in an arbitrary or capricious manner." *Zhang v. U.S. Att'y Gen.*, 572 F.3d 1316, 1319 (11th Cir. 2009) (per curiam). "The moving party bears a heavy burden, as motions to reopen are disfavored, especially in removal proceedings." *Id.* (citations omitted). "Claims that the BIA failed to give reasoned consideration to an issue or claims of legal error are questions of law[]" we review *de novo*. *Morales v. U.S. Att'y Gen.*, 33 F.4th 1303, 1307 (11th Cir. 2022).

III.

Shafikova argues that the BIA abused its discretion by refusing to reopen proceedings *sua sponte* and violated her due process rights. She contends that the BIA violated her due process rights when it failed to give her motion "reasoned consideration" because it (1) misstated the record and (2) overlooked a significant component of her claim. As proof, Shafikova notes that the BIA failed to reference her final three supplements and previously mishandled other parts of the record because it asked her to resend her motion and first two supplements. We disagree.

The BIA has the authority to reopen removal proceedings *sua sponte* at any time and has broad discretion over such actions. *See Butka v. U.S. Att'y Gen.*, 827 F.3d 1278, 1283 (11th Cir. 2016); 8 C.F.R. § 1003.2(a). But it will exercise this authority only in exceptional circumstances, such as a fundamental change in law. *Butka*, 827 F.3d at 1283. "[W]e have held on several occasions that we lack jurisdiction to review a decision of the BIA not to exercise its power to reopen a case *sua sponte*." *Bing Quan Lin v. U.S. Att'y Gen.*, 881 F.3d 860, 871 (11th Cir. 2018). That includes the BIA's determination of whether there was a fundamental change in the law. *See Butka*, 827 F.3d at 1286. "We have observed that we may retain jurisdiction where constitutional claims are raised relating to the BIA's refusal to reopen *sua sponte*." *Bing Quan Lin*, 881 F.3d at 871; *see also Butka*, 827 F.3d at 1286 & n.7. But we lack jurisdiction over a constitutional claim that is not colorable. *Ponce Flores*, 64 F.4th at 1217.

We lack jurisdiction to consider Shafikova's argument that the BIA failed to give "reasoned consideration" when exercising its discretion not to reopen proceedings *sua sponte*. That standard of review derives from 8 U.S.C. § 1252(b)(4) and 8 C.F.R. § 208.16(c)(3)—not the U.S. Constitution.[3] *See Perez-Guerrero v. U.S. Att'y Gen.*, 717 F.3d 1224, 1232 (11th Cir. 2013) (per curiam).

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[3] Even if we considered Shafikova's "reasoned consideration" argument, we would conclude that the BIA met that standard. "Under controlling precedent, we are tasked with affirming the BIA's decision if it is based on 'reasoned consideration' and shows that the BIA has 'made adequate findings' to support its outcome." *Bing Quan Lin v. U.S. Att'y Gen.*, 881 F.3d 860, 872 (11th Cir.

Shafikova's procedural due process argument fails too, even if we have jurisdiction to review it. A "[p]rocedural due process claim[] must assert a deprivation of a constitutionally protected liberty or property interest." *Bing Quan Lin*, 881 F.3d at 868–69. "'[F]ailure to receive relief that is purely discretionary in nature does not amount to a deprivation of a liberty interest' and thus cannot deprive [a noncitizen] of due process under the Fifth Amendment." *Ponce Flores*, 64 F.4th at 1218 (quoting *Mejia Rodriguez v.*

2018) (quoting *Gaksakuman v. U.S. Att'y Gen.*, 767 F.3d 1164, 1168 (11th Cir. 2014)). The BIA must "consider the issues raised and announce its decision in terms sufficient to enable a reviewing court to perceive that it has heard and thought and not merely reacted." *Tan v. U.S. Att'y Gen.*, 446 F.3d 1369, 1374 (11th Cir. 2006) (quoting *Vergara-Molina v. INS*, 956 F.2d 682, 685 (7th Cir. 1992)).

Despite her arguments to the contrary, the BIA provided a reasoned basis for its decision: Shafikova's motion was both number-barred and untimely under 8 U.S.C. § 1229a(c)(7)(A), (c)(7)(C)(i). That alone is a "reasonable ground" for the BIA to rely on in declining to exercise its discretionary power to reopen Shafikova's proceedings. *See Bing Quan Lin*, 881 F.3d at 875. And that ground is supported by adequate findings: (1) Shafikova's motion was filed on June 13, 2017, several years after the final administrative order was entered in the case, and (2) Shafikova had filed a motion to reopen, which was denied on June 13, 2014, and a motion to reconsider, which was denied on August 7, 2014.

Moreover, the BIA's failure to list Shafikova's final three supplements and its previous request for Shafikova to resend documents does not "force[] us to doubt whether we and the [BIA] are, in substance, looking at the same case." *Martinez v. U.S. Att'y Gen.*, 992 F.3d 1283, 1294 (11th Cir. 2021) (second alteration in original) (quoting *Ali v. U.S. Att'y Gen.*, 931 F.3d 1327, 1334 (11th Cir. 2019)). The BIA explained that *Matter of L-E-A-* was not a fundamental change in the law, which shows that the BIA "heard and thought" about Shafikova's claim and had reasonable grounds to reject it.

Reno, 178 F.3d 1139, 1146 (11th Cir. 1999)). "What's more, we have specifically identified . . . motions to reopen [or reconsider] as discretionary forms of relief as to which there is no constitutionally protected interest." *Bing Quan Lin*, 881 F.3d at 869. Shafikova has no right to remain in the United States because she was ordered removed after receiving all the process she was due. *See Arambula-Medina v. Holder*, 572 F.3d 824, 829 (10th Cir. 2009) (concluding that the only protections afforded to noncitizens seeking to remain in the United States "are the minimal procedural due process rights for an opportunity to be heard at a meaningful time and in a meaningful manner" (quoting *de la Llana-Castellon v. INS*, 16 F.3d 1093, 1096 (10th Cir. 1994))). The Fifth Amendment therefore does not require the BIA to grant Shafikova relief because she has no protected liberty interest in a motion to reopen and reconsider—much less a second motion to reopen and reconsider. *See Bing Quan Lin*, 881 F.3d at 869.

IV.

Accordingly, we dismiss Shafikova's petition for review for lack of jurisdiction.

PETITION DISMISSED.