[DO NOT PUBLISH]

In the

United States Court of Appeals

For the Eleventh Circuit

No. 22-13466

Non-Argument Calendar

BLANCA NOEMI MARTINEZ-RIOS,

Petitioner,

versus

U.S. ATTORNEY GENERAL,

Respondent.

Petition for Review of a Decision of the
Board of Immigration Appeals
Agency No. A038-779-434

Before NEWSOM, ABUDU, and ANDERSON, Circuit Judges.

PER CURIAM:

Blanca Noemi Martinez-Rios, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' order denying her motion to reopen the proceedings that resulted in her removal from the United States.

Martinez was convicted of trafficking marijuana in violation of O.C.G.A. § 16-13-31. After her release, she was charged as removable for committing a drug-trafficking aggravated felony in violation of the Immigration and Nationality Act § 237(a)(2)(A)(iii), 8 U.S.C. § 1227(a)(2)(A)(iii), and for having been convicted of a controlled-substance offense in violation of INA § 237(a)(2)(B)(i), 8 U.S.C. § 1227(a)(2)(B)(i). Martinez applied for cancellation of removal arguing that her conviction was not an aggravated felony drug trafficking offense. An immigration judge denied her application and in 2016 the BIA affirmed on appeal.

Martinez subsequently filed a motion to reopen her removal proceeding based on what she contended was an intervening change in law. The BIA denied her motion in 2022 and she petitioned this Court for review.

In her petition, Martinez asserts that her Georgia conviction for drug trafficking under O.C.G.A. § 16-13-31(c) does not categorically qualify as an aggravated felony that would make her ineligible for cancellation of removal under the INA. Additionally, she contends that the BIA abused its discretion in denying her motion

to reopen by disregarding this Court's decision in *Jones v. U.S. Attorney General*, 742 F. App'x 491 (11th Cir. 2018) (unpublished), and in failing to acknowledge *Cintron v. U.S. Attorney General*, 882 F.3d 1380 (11th Cir. 2018), and *Francisco v. U.S. Attorney General*, 884 F.3d 1120 (11th Cir. 2018), as intervening changes in law.

After careful review of Martinez's petition, we dismiss it in part and grant it in part.[1]

I

A petition for review must be filed within 30 days of the BIA's decision. INA § 242(b)(1), 8 U.S.C. § 1252(b)(1). We lack jurisdiction to review a final order of removal if the petition is not filed within the deadline because "the statutory limit for filing a petition for review in an immigration proceeding is mandatory and jurisdictional, [and] is not subject to equitable tolling." *Dakane v. U.S. Att'y Gen.*, 399 F.3d 1269, 1272 n.3 (11th Cir. 2005) (internal quotation marks omitted).

---

[1] We review de novo our jurisdiction to review a petition for review of a BIA decision. *Rendon v. U.S. Att'y Gen.*, 972 F.3d 1252, 1256 (11th Cir. 2020). We review legal issues de novo, including whether the BIA afforded a petition reasoned consideration. *Ali v. U.S. Att'y Gen.*, 931 F.3d 1327, 1333 (11th Cir. 2019).

We review the BIA's denial of a motion to reopen for an abuse of discretion. *Flores-Panameno v. U.S. Att'y Gen.*, 913 F.3d 1036, 1040 (11th Cir. 2019). Our review "is limited to determining whether there has been an exercise of administrative discretion and whether the matter of exercise has been arbitrary or capricious." *Id.* (internal quotation marks omitted).

It appears that Martinez, at least in part, asks us to review the BIA's 2016 order holding that she was ineligible for cancellation of removal because her Georgia conviction for marijuana trafficking was an aggravated felony. To the extent that she disputes the BIA's 2016 decision, we lack jurisdiction because her current petition requests review only of the BIA's 2022 decision denying her motion to reopen, and she did not timely file a petition for review from the BIA's 2016 decision. *Dakane*, 339 F.3d at 1272 n.3. Accordingly, we dismiss the petition to the extent that it raises challenges to the BIA's 2016 decision.

II

"A petitioner may file one, and only one motion for reopening of an order of removal." *Bing Quan Lin v. U.S. Att'y Gen.*, 881 F.3d 860, 872 (11th Cir. 2018) (citing INA § 240(c)(7)(A), 8 U.S.C. § 1229a(c)(7)(A)). The BIA may deny a motion to reopen based on at least one of three independent grounds: "1) failure to establish a prima facie case; 2) failure to introduce evidence that was material and previously unavailable; and 3) a determination that despite the alien's statutory eligibility for relief, he or she is not entitled to a favorable exercise of discretion." *Flores-Panameno v. U.S. Att'y Gen.*, 913 F.3d 1036, 1040 (11th Cir. 2019) (internal quotation marks omitted).

"To enable our review, the Board must give reasoned consideration to an applicant's claims and make adequate findings." *Ali v. U.S. Att'y Gen.*, 931 F.3d 1327, 1333 (11th Cir. 2019) (internal quotation marks omitted). The BIA fails to give reasoned

consideration to a claim when it "misstates the contents of the record, fails to adequately explain its rejection of logical conclusions, or provides justifications for its decision which are unreasonable and which do not respond to any arguments in the record." *Bing Quan Lin*, 881 F.3d at 874 (internal quotation marks omitted). In conducting a reasoned-consideration examination, we determine whether the BIA "has considered the issues raised and announced its decision in terms sufficient to enable a reviewing court to perceive that it has heard and thought and not merely reacted." *Id.* We have held that although we review legal issues de novo, "we are sometimes prevented from performing that review in the first place" when the BIA fails to provide reasoned consideration. *Ali*, 931 F.3d at 1333. In those cases, we will "hold that the decision is incapable of review and thus [will] not proceed to analyze the Board's legal or factual conclusions." *Id.*

In her motion to reopen, Martinez relied on this Court's unpublished opinion *Jones v. U.S. Attorney General*, 742 F. App'x 491 (11th Cir. 2018), as well as two of this Court's published decisions, *Cintron v. U.S. Attorney General*, 882 F.3d 1380 (11th Cir. 2018), and *Francisco v. U.S. Attorney General*, 884 F.3d 1120 (11th Cir. 2018). In its decision, the BIA stated it was "not persuaded" that *Jones* was intervening case law warranting reopening because the Court "specified that its decision was based on the particular record and argument before it, and it did not identify the statute at issue." Additionally, the BIA recognized that *Jones* was unpublished and, thus, not binding precedent. The BIA decision didn't address the two binding Eleventh Circuit cases cited in Martinez's motion.

The BIA did not abuse its discretion in concluding that *Jones*—as an unpublished, nonbinding decision—didn't alone warrant reopening. However, the BIA failed to provide reasoned consideration to Martinez's argument that *Jones*, in combination with this Court's published, binding precedent in *Cintron* and *Francisco*, warranted reopening of her removal proceedings.[2] We aren't able to engage in meaningful appellate review because the BIA claimed that there were no published decisions on point without explaining why *Cintron* and *Francisco*—which are both published and address substantially similar statutory language to the statute here—did not support Martinez's argument that reopening was warranted because of a change in law.[3] Accordingly, we grant the petition as

---

[2] Although Martinez did not explicitly raise a reasoned-consideration argument, her arguments that the BIA improperly required a published decision on the exact statute at issue in her matter and failed to analyze the relevant published decisions in *Cintron* and *Francisco* are effectively "arguments clothed in reasoned consideration garb." *Indrawati v. U.S. Att'y Gen.*, 779 F.3d 1284, 1302 (11th Cir. 2015) (internal quotations omitted).

[3] The statute under which Martinez was convicted provides:

> Except as authorized by this article, any person who sells, manufactures, grows, delivers, brings into this state, or has possession of a quantity of marijuana exceeding ten pounds commits the offense of trafficking in marijuana and, upon conviction thereof, shall be punished as follows . . .

O.C.G.A. § 16-13-31(c).

The statue at issue in *Cintron*:

> Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual

to the BIA's 2022 order, vacate the decision, and remand to the BIA for further consideration.

* * *

In sum, we hold that we do not have jurisdiction to review the BIA's 2016 decision and that the BIA failed to provide reasoned consideration to Martinez's arguments raised in her 2018 motion to reopen.

> or constructive possession of, 4 grams or more of any morphine, opium, oxycodone, hydrocodone, hydromorphone, or any salt, derivative, isomer, or salt of an isomer thereof, including heroin, as described in s. 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or 4 grams or more of any mixture containing any such substance, but less than 30 kilograms of such substance or mixture, commits a felony of the first degree, which felony shall be known as "trafficking in illegal drugs," punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Fla. Stat. § 893.135(1)(c).

The statue at issue in *Francisco*:

> Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 28 grams or more of cocaine, as described in s. 893.03(2)(a) 4., or of any mixture containing cocaine, but less than 150 kilograms of cocaine or any such mixture, commits a felony of the first degree, which felony shall be known as "trafficking in cocaine," punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Fla. Stat. § 893.135(1)(b).

PETITION DISMISSED IN PART AND GRANTED IN PART.