[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 10-10587
Non-Argument Calendar

Agency No. A070-926-476

ESTHER GUADALUPE MARTINEZ-ANDRADE,
a.k.a. Esther Guadalupe Mertinez-Andrade,

Petitioner,

versus

U. S. ATTORNEY GENERAL,

Respondent.

Petition for Review of a Decision of the
Board of Immigration Appeals

(January 6, 2010)

Before EDMONDSON, MARCUS and PRYOR, Circuit Judges.

PER CURIAM:

Esther Guadalupe Martinez-Andrade, proceeding pro se, seeks review of the

Board of Immigration Appeals' ("BIA") decision denying her motion to reconsider an order affirming the denial of her application for cancellation of removal under § 240A(b) of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1229b(b). On appeal, Martinez-Andrade argues that the BIA abused its discretion in denying her untimely motion, because the BIA, in its Practice Manual, has encouraged aliens and those representing them to use overnight delivery services to ensure prompt delivery of pleadings, and the agency should have excused her untimeliness in this instance. After thorough review, we deny the petition.

The BIA's denial of a motion to reconsider is reviewed for abuse of discretion. Assa'ad v. U.S. Att'y Gen., 332 F.3d 1321, 1341 (11th Cir. 2003). 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." Abdi v. U.S. Att'y Gen., 430 F.3d 1148, 1149 (11th Cir. 2005). An alien may file one motion to reconsider an order of removal, but it must be filed within 30 days of the final administrative order, and the motion "shall specify the errors of law or fact in the previous order and shall be supported by pertinent authority." 8 U.S.C. § 1229a(c)(6); 8 C.F.R. § 1003.2(b).

"The BIA's interpretation of immigration statutes are due Chevron deference where appropriate." Chen v. U.S. Att'y Gen., 565 F.3d 805, 809 (11th Cir. 2009)

(noting that "[t]he degree of deference is especially great in the field of immigration"). "Under Chevron, where Congress in a statute has not spoken unambiguously on an issue, the interpretation of the statute by an agency entitled to administer it is entitled to deference so long as it is reasonable." Id. Chevron deference is appropriate in cases involving precedential three-member decisions of the BIA or where a single-member BIA decision relies on existing BIA or federal court precedent. Quinchia v. U.S. Att'y Gen., 552 F.3d 1255, 1258 (11th Cir. 2008).

The BIA does not deem a motion filed until it is received by the agency, as it does not recognize the "mailbox rule." Matter of Liadov, 23 I. & N. Dec. 990, 992 (2006). The BIA has recognized that its Practice Manual encourages parties to use overnight delivery services to ensure timely filing, and that it leaves open the possibility that delivery delays could, in "rare circumstances," excuse untimely filings. Id. (citing Practice Manual, § 3.1(b)(iv), at 34). However, the BIA has noted that the Practice Manual "strongly recommends that parties file as far in advance of the deadline as possible," and that it specifically cautions them that use of an overnight delivery service does not mean that failing to meet filing deadlines will be excused. Id. Consequently, "although a delivery delay might excuse untimeliness in a rare case, such as where the delivery was very late or caused by 'rare'

circumstances, the Practice Manual makes clear that, in general, such delays do not affect deadlines." Id.

Here, Martinez-Andrade provided no evidence that the delay in the filing of her motion to reconsider was a "rare" circumstance warranting excuse of its untimeliness. Martinez-Andrade's repeated failure to comply with the BIA's filing deadlines based on her attorneys' deficiencies supports the BIA's finding that the delay of the filing of the instant motion was not a "rare" circumstance. As a result, the BIA did not abuse its discretion by denying her untimely motion on this basis. Id. Moreover, although not reached by the BIA, her motion nevertheless failed to satisfy the statutory requirements, as it failed to "specify the errors of law or fact in the previous order." 8 U.S.C. § 1229a(c)(6); 8 C.F.R. § 1003.2(b). Accordingly, the BIA did not abuse its discretion by denying her untimely motion on this basis, and we deny her petition.

DENIED.