

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 10-11620
Non-Argument Calendar

FILED U.S. COURT OF APPEALS ELEVENTH CIRCUIT NOVEMBER 3, 2010 JOHN LEY CLERK

Agency No. A074-928-057

MARLINE THOMPSON-WARD,

Petitioner,

versus

U.S. ATTORNEY GENERAL,

Respondent.

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

(November 3, 2010)

Before TJOFLAT, WILSON and KRAVITCH, Circuit Judges.

PER CURIAM:

Marline Thompson-Ward, a native and citizen of Jamaica, petitions for review of the Board of Immigration Appeals' (BIA's) order denying her motion to reopen her case. After thorough review, we deny her petition in part and dismiss it in part.

I. Background

Marline Thompson-Ward was admitted to the United States in July 1989, with authorization to remain until January 16, 1990. In 1996, the Immigration and Naturalization Service (INS) denied Thompson-Ward's first husband's petition to obtain a visa on her behalf because it determined that her marriage was a "sham." *See* 8 U.S.C. § 1154(c). Soon after, the INS served her with a notice to appear for removal proceedings. In 1998, the INS continued these proceedings because it approved her second husband's petition to adjust her immigration status. The INS, however, subsequently revoked this approval, finding that Thompson-Ward was ineligible for a visa because of the INS's previous determination that her first marriage was a sham.

In her removal hearing in 2003, Thompson-Ward argued that she should be granted relief from removal because of her second marriage. The immigration judge denied her relief and ordered that she voluntarily depart the United States in 60 days. In 2004, the BIA affirmed this order. Thompson-Ward, however, did not

leave the country and remarried in 2008. In 2009, she moved the BIA to reopen her removal proceedings, arguing that the BIA should exercise its *sua sponte* power to reopen her case because her previous attorney provided her insufficient representation. The BIA denied the motion, and Thompson-Ward petitions this court for review.

II. Analysis

Thompson-Ward argues that the BIA erred in denying her motion to reopen. In support, she reiterates her argument that she received ineffective assistance of counsel. She also argues for the first time on appeal that she and her third husband attended an extensive interview at the Department of Homeland Security and her “petition was approved.”¹

We review the BIA’s denial of a motion to reopen for abuse of discretion. *Abdi v. U.S. Att’y Gen.*, 430 F.3d 1148, 1149 (11th Cir. 2005). A motion to reopen must be filed no later than 90 days after the final administrative decision in the proceeding sought to be reopened. 8 C.F.R. § 1003.2(c)(2); *see also Abdi*, 430 F.3d at 1150 (holding that the 90-day period is not subject to equitable tolling on account of ineffective assistance of counsel). In this case, Thompson-Ward filed her motion to reopen five years after the BIA issued its final decision. Thus, the

¹ The approved petition is not included in the record.

BIA did not abuse its discretion in denying Thompson-Ward's petition as untimely.

The BIA also has the *sua sponte* authority to grant an untimely motion to reopen. 8 C.F.R. § 1003.2(a). We lack jurisdiction, however, to review the BIA's refusal to exercise its discretionary *sua sponte* power to reopen cases. *Lenis v. U.S. Att'y Gen.*, 525 F.3d 1291, 1292-93 (11th Cir. 2008). Thus, to the extent that Thompson-Ward's appeal can be construed as challenging the BIA's failure to exercise its *sua sponte* power, we lack jurisdiction to address these arguments.

Thompson-Ward's petition is therefore

DENIED IN PART AND DISMISSED IN PART.