

NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 24-11415
Non-Argument Calendar

ARMANDO ANAYA-JIMENEZ,

Petitioner,

versus

U.S. ATTORNEY GENERAL,

Respondent.

Petition for Review of a Decision of the
Board of Immigration Appeals
Agency No. A089-919-258

Before LUCK, LAGOA, and WILSON, Circuit Judges.

PER CURIAM:

Armando Anaya-Jimenez petitions this Court for review of the Board of Immigration Appeals's denial of his motion to reconsider his motion to reopen that the board previously denied. The

board determined that Anaya-Jimenez's motion did not demonstrate an error of fact or law warranting reconsideration. Finding no abuse of discretion, we deny the petition.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

Anaya-Jimenez is a Mexican native and citizen. The Department of Homeland Security served Anaya-Jimenez with a notice to appear before an immigration judge, charging that he was removable under the Immigration and Nationality Act. At his initial removal hearing, Anaya-Jimenez, through counsel, admitted the factual allegations contained in the notice to appear and conceded the charge of removal. The immigration judge sustained the removability charge.

Anaya-Jimenez filed an application for cancellation of removal. He asserted that his removal would cause substantial hardship to his spouse and children. In addition to submitting evidence to support his application, Anaya-Jimenez provided his own testimony and that of witnesses at the merits hearing.

In a written decision, the immigration judge denied Anaya-Jimenez's application for cancellation of removal but granted him voluntary departure. She found that Anaya-Jimenez established he had three qualifying relatives: his three minor children who were United States citizens. But the immigration judge found that—while the children suffered from asthma and undiagnosed psychological issues—none experienced serious health issues, special needs in school, or any other exceptional hardship. She explained that if Anaya-Jimenez were to take his children to Mexico, he could

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support them by obtaining a job using his tile-installation skills. Or, if the children remained in the United States, she determined that Anaya-Jimenez's wife could support them, and would potentially have additional financial assistance from Anaya-Jimenez's adult daughter. Thus, the immigration judge concluded that Anaya-Jimenez failed to establish that his minor children would suffer the requisite level of exceptional and extremely unusual hardship necessary for cancellation of removal.

Anaya-Jimenez appealed the immigration judge's decision to the board. He filed evidence with the appeal, including: (1) a copy of a psychological report that had already been submitted to the immigration judge; (2) documents and photos relating to his children's extracurricular activities and school participation; and (3) articles about the country conditions in Mexico

The board dismissed Anaya-Jimenez's appeal. The board agreed with the immigration judge's finding that Anaya-Jimenez did not demonstrate his removal would cause his three minor children exceptional and extremely unusual hardship. It also construed the submission of additional evidence as a motion to remand but denied the motion because the evidence would not likely change the result in the case. The board reinstated the immigration judge's grant of voluntary departure.

Anaya-Jimenez then moved to reopen his removal proceedings. He asserted that new evidence showed his adult daughter had a kidney transplant. While his daughter was not a qualifying relative, he argued that her severe health issues should be taken into

consideration when determining whether she could help contribute to the care of the qualifying relatives. Anaya-Jimenez also submitted documentation of “preliminary findings and diagnostic impressions” that two of his minor children suffered from asthma, posttraumatic stress disorder, and major depressive disorder. Anaya-Jimenez also sought to reopen removal proceedings to apply for asylum, withholding of removal, and protection under the Convention Against Torture. Specifically, he argued that he feared persecution because of violence against his family in Mexico, including the murder of his nephew and the kidnapping of his cousin’s daughter. He also argued that changed country conditions in Mexico established a high level of corruption in the Mexican government.

The board denied Anaya-Jimenez’s motion to reopen. First, the board concluded that the new evidence did not meet the burden of exceptional and extremely unusual hardship required for cancellation of removal because: (1) there was no evidence that Anaya-Jimenez’s adult daughter could not work despite her health conditions; (2) the psychological evaluations of his minor children were “preliminary and cursory in nature[;]” and (3) the evidence of violent conditions in Mexico did not show that the children would be affected by the violence. Second, the board found that Anaya-Jimenez failed to establish *prima facie* eligibility for asylum or withholding of removal because he only showed a fear of generalized violence, not that he will face persecution on account of a protected ground. Third, the board determined that he had not made a *prima facie* showing of eligibility for Convention relief because

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he had not demonstrated a likelihood of torture with the requisite state action.

Anaya-Jimenez moved for reconsideration of the board's decision denying his motion to reopen. He argued that the board "made improper factual and legal findings" when it concluded that there was no evidence his adult daughter could not work and that the psychological evaluations were not formal diagnoses. He also contended that the board erred in not remanding the case for additional testimony about the changed country conditions in Mexico and the violence against members of his family. To his motion, he attached psychological evaluations of two of his children, updated medical documents, and articles relating to health conditions.

The board denied Anaya-Jimenez's motion to reconsider. It concluded that Anaya-Jimenez did not show any error in its findings about his adult daughter's ability to provide financial support and the preliminary nature of the psychological evaluations. Additionally, because Anaya-Jimenez submitted new evidence, the board construed the motion as a second motion to reopen. It denied the second motion to reopen as barred by the time and number limitations on such motions.

Anaya-Jimenez petitions to review the board's denial of his motion to reconsider.

STANDARD OF REVIEW

We review for an abuse of discretion the board's denial of a motion to reconsider. *Ferreira v. U.S. Att'y Gen.*, 714 F.3d 1240, 1242

(11th Cir. 2013). The board abuses its discretion if it misapplies the law, refuses to follow its own precedents without reasoned explanation, or otherwise acts in an arbitrary or capricious manner. *Id.* at 1243.

DISCUSSION

Anaya-Jimenez argues that the board abused its discretion in denying his motion to reconsider by: (1) imposing legally erroneous requirements to establish prima facie eligibility for cancellation of removal; (2) failing to give reasoned consideration to evidence of his asylum and Convention claims; and (3) determining that he failed to establish prima facie eligibility for asylum. We address each issue in turn.

Prima Facie Eligibility for Cancellation of Removal

Anaya-Jimenez argues that the board misapplied the law by “impos[ing] arbitrary and legally unsupported evidentiary requirements” to conclude that he failed to state a prima facie case for cancellation of removal. Specifically, he asserts that the board erred as a matter of law by requiring him to explicitly establish that his adult daughter was unable to help provide financial support because of her medical conditions. He also contends that the board erred by “indicating that only definitive or fully developed evidence can establish prima facie eligibility for relief” when it concluded that the psychological evidence was “preliminary in nature.” We disagree.

First, contrary to Anaya-Jimenez’s argument, the board’s decision does not reflect that he was required to submit explicit

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evidence stating that his adult daughter's medical condition would make her unable to provide financial support. While the board acknowledged his adult daughter's medical issues in denying the motion to reopen, there was also evidence that she was "fine" after her kidney transplant. In other words, there was evidence that her health condition would not prevent her from financially assisting her family.

Second, the board did not require any specific type of psychological evidence; it concluded that the evidence provided was not enough to show that the children's medical conditions would cause the requisite level of hardship. The evidence Anaya-Jimenez submitted stated only that two of the children were scheduled for psychological evaluation appointments and listed "[p]reliminary [d]iagnostic [i]mpressions" of asthma, posttraumatic stress disorder, and major depressive disorder. In its denial of the motion to reopen, the board explained that the preliminary psychological evaluations had not been supplemented to explain how the medical conditions were serious or how they would cause any exceptional and extremely unusual hardship on the children.

Thus, the board acted within its discretion in denying the motion to reconsider because Amaya-Jimenez failed to show that the board imposed arbitrary and unsupported evidentiary requirements.

Reasoned Consideration of Evidence

Next, Anaya-Jimenez argues that the board failed to give reasoned consideration to the evidence he submitted in support of his

asylum and Convention claims. To enable our review of a board's decision, the board must give reasoned consideration to an applicant's claims. *Ali v. U.S. Att'y Gen.*, 931 F.3d 1327, 1333 (11th Cir. 2019) (internal quotation marks and citations omitted). We review de novo an assertion that the board failed to give reasoned consideration. *Id.* In reviewing an application for relief, the board must consider all evidence submitted but need not address specifically each claim or piece of evidence presented. *Indrawati v. U.S. Att'y Gen.*, 779 F.3d 1284, 1302 (11th Cir. 2015), *overruled in part on other grounds by Santos-Zacaria v. Garland*, 598 U.S. 411 (2023). The reasoned consideration requirement exists merely "to ensure that the [immigration judge] and the [board] considered the issues raised and announced their decisions in terms sufficient to enable review." *Id.* (citation omitted).

The board gave reasoned consideration to Anaya-Jimenez's evidence in support of his asylum and Convention claims. In its denial of his motion to reconsider, the board reiterated that the evidence he presented with his motion to reopen was insufficient to make a prima facie showing of eligibility for asylum or Convention relief. In assessing the asylum claim, the board acknowledged the murder of Anaya-Jimenez's nephew and the kidnapping of his cousin's daughter, but concluded that the evidence provided failed to identify the perpetrators or their motives. Similarly, the board acknowledged the violent conditions in Mexico, but declined to find that those conditions established that Anaya-Jimenez was likely to face torture with the requisite state action as required to receive relief under the Convention. The board's decision showed

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that it gave reasoned consideration to the evidence, even if it did not specifically discuss each piece. *See id.*; *Ali*, 931 F.3d at 1333–34.

Prima Facie Eligibility for Asylum

Finally, Anaya-Jimenez contends that the board abused its discretion by categorizing the violence against his nephew and his cousin’s daughter as “generalized violence” and concluding that he did not establish a fear of persecution due to his family membership. But his motion to reconsider merely reiterates the same argument he previously presented to the board in his motion to reopen. *See Calle v. U.S. Att’y Gen.*, 504 F.3d 1324, 1330–31 (11th Cir. 2007) (denying a petition for review where a motion to reconsider “offered nothing more than reiteration of [the] assertions in [the] motion to reopen”).

Even if Anaya-Jimenez’s argument was new, the board did not abuse its discretion in concluding that the circumstantial evidence Anaya-Jimenez provided was insufficient to establish that he would face persecution in Mexico based on his family membership. To establish eligibility for asylum, an applicant must show—with credible and specific evidence—either past persecution or a well-founded fear of future persecution based on race, religion, nationality, membership in a particular social group, or political opinion. 8 U.S.C. §§ 1158(b)(1), 1101(a)(42); *Forgue v. U.S. Att’y Gen.*, 401 F.3d 1282, 1286–87 (11th Cir. 2005). In his own statement, Anaya-Jimenez admitted that no one knew who murdered his nephew or kidnapped his cousin’s daughter; he only suspected that it was one of the local cartels. He did not explain why his family

was targeted as a social group, as opposed to the risk of violence faced by all families in Mexico. Thus, the board's denial of Anaya-Jimenez's motion to reconsider based on his failure to establish a prima facie claim for asylum was not arbitrary or capricious.

CONCLUSION

In sum, the board did not abuse its discretion in denying Anaya-Jimenez's motion to reconsider. We deny his petition for review.

PETITION DENIED.