NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 25-13936
Non-Argument Calendar

TORAL BALDEVBHAI PATEL,

Petitioner,

versus

U.S. ATTORNEY GENERAL,

Respondent.

Petition for Review of a Decision of the
Board of Immigration Appeals
Agency No. A201-235-109

Before NEWSOM, BRASHER, and BLACK, Circuit Judges.

PER CURIAM:

Toral Patel petitions for review of the order by the Board of Immigration Appeals (BIA) denying her motion to reopen and terminate her removal proceedings. Patel contends the BIA abused

its discretion in declining to reopen her removal proceedings because her bona fide deferred action status and employment authorization granted by the United States Citizenship and Immigration Services (USCIS), combined with her over 20 years of law-abiding residence in the United States and her pending U visa application, constituted changed circumstances warranting equitable consideration. She contends the BIA failed to substantively engage with those circumstances and denied her due process. Patel further asserts the BIA applied an unnecessarily restrictive view of the "exceptional situation" standard governing its sua sponte authority to reopen cases, contending that her combination of positive personal circumstances and pending U visa application should have qualified as an exceptional situation warranting sua sponte reopening. The Government moves for summary denial in part and dismissal in part of the petition of review, and to stay the briefing schedule.

I. DISCUSSION

A. Motion to Reopen

"An alien who is subject to a final order of removal and wishes to reopen the proceedings must move to reopen within 90 days of the date on which the removal order became final." *Mei Ya Zhang v. U.S. Att'y Gen.*, 572 F.3d 1316, 1319 (11th Cir. 2009). That deadline does not apply if the motion "is based on changed country conditions arising in the country of nationality or the country to which removal has been ordered, if such evidence is material and was not available and would not have been discovered or presented at the previous proceeding." 8 U.S.C. § 1229a(c)(7)(C)(ii). But this

exception does not apply to a change in the movant's own personal circumstances. *Mei Ya Zhang*, 572 F.3d at 1319.

The BIA did not abuse its discretion in denying Patel's motion to reopen. *See id.* (reviewing for abuse of discretion the denial of a motion to reopen removal proceedings). The BIA did not abuse its discretion in denying Patel's motion to reopen because she filed it over 12 years after the 90-day statutory deadline from the date when her removal order became final and she did not demonstrate her eligibility for an exception to the time-bar by introducing material and previously unavailable evidence of changed conditions in India. *See id.* Although Patel argues that USCIS's grant of a bona fide deferred action and employment authorization while her U visa application was pending constituted a material change in circumstances warranting the grant of her motion, that change related only to her personal circumstances, and a relevant material change in circumstances for purposes of the time-bar for filing a motion to reopen is limited to changes that occur in a petitioner's home country rather than changes in personal circumstances. *See id.* Thus, the BIA's denial of her untimely motion was not arbitrary or capricious. 8 U.S.C. § 1229a(c)(7)(C)(ii); *Ali v. U.S. Att'y Gen.*, 443 F.3d 804, 808 (11th Cir. 2006) (explaining the abuse of discretion standard of review limits our review "to determining whether there has been an exercise of administrative discretion and whether the matter of exercise has been arbitrary or capricious").

Patel asserts that equitable considerations supported her motion, such as her law-abiding and productive life in the United

States, but she has not provided any support for her contention that such considerations are relevant to the BIA's denial of an untimely motion to reopen. *See* Fed. R. App. P. 28(a)(8) (stating an appellant's brief must contain their "contentions and the reasons for them, with citations to the authorities and parts of the record on which the appellant relies"). Patel's contention the BIA failed to engage with *Matter of Coronado-Acevedo* also fails because that case grants the BIA discretion to end removal proceedings when doing so is necessary for a petitioner to seek relief from the USCIS, and the BIA noted in its denial of her motion that Patel could still pursue a U visa irrespective of her removal order. *See Matter of Coronado-Acevedo*, 28 I. & N. Dec. 648, 651-52 (A.G. 2022) (determining the BIA has the discretion to grant termination or dismissal of removal proceedings in limited circumstances, including where necessary for the respondent to be eligible to seek immigration relief before USCIS).

Also, Patel cannot establish the substantial prejudice necessary to sustain a due process claim because she cannot show the outcome of her removal proceedings would have been different absent any error. *See Lapaix v. U.S. Att'y Gen.*, 605 F.3d 1138, 1143 (11th Cir. 2010) (explaining to establish a violation of her Fifth Amendment right to due process, a petitioner must show "she was deprived of liberty without due process of law and that the purported errors caused her substantial prejudice," and "[t]o show substantial prejudice, an alien must demonstrate that, in the absence of the alleged violations, the outcome of the proceeding would have been different"). All the evidence put forth in support of her

motion related to her personal circumstances, and even if the BIA had engaged with that evidence, the outcome would have been the same due to the untimely filing of her motion and the lack of evidence relating to changes in India. *See id.*; 8 U.S.C. § 1229a(c)(7)(C)(ii).

B. Sua Sponte Reopening

The BIA has the discretion to "at any time reopen or reconsider on its own motion any case in which it has rendered a decision." 8 C.F.R. § 1003.2(a); *Kucana v. Holder*, 558 U.S. 233, 250 (2010). We have explained we lack jurisdiction to review the BIA's decision to reopen sua sponte because the BIA's decision is "committed to agency discretion by law" and this discretion is so wide and standardless that it is non-reviewable. *Lenis v. U.S. Att'y Gen.*, 525 F.3d 1291, 1294 & n.7 (11th Cir. 2008). However, we have stated that we may retain jurisdiction concerning constitutional claims based on the BIA's decision denying a motion to reopen proceedings sua sponte. *Bing Quan Lin v. U.S. Att'y Gen.*, 881 F.3d 860, 871 (11th Cir. 2018), *overruled in part on other grounds by*, *Santos-Zacaria v. Garland*, 598 U.S. 411, 419 (2023).

We lack jurisdiction to review the BIA's decision not to exercise its sua sponte authority to reopen Patel's case. *See Lenis*, 525 F.3d at 1294 & n.7. To the extent we may retain jurisdiction over a constitutional claim challenging the BIA's refusal to reopen sua sponte, *Bing Quan Lin*, 881 F.3d at 871, Patel's due process claim for sua sponte reopening fails for the same reason as her due process

claim fails for the denial of her motion to reopen. *See Lapaix*, 605 F.3d at 1143.

II. CONCLUSION

The Government is clearly right as a matter of law and there can be no substantial question as to the outcome that the BIA did not abuse its discretion in denying Patel's motion to reopen. *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969)[1] (explaining summary disposition is appropriate where "the position of one of the parties is clearly right as a matter of law so that there can be no substantial question as to the outcome of the case"). Patel filed her motion to reopen well after the 90-day statutory deadline and has not demonstrated that she qualified for an exception to that deadline or that the denial was arbitrary or capricious, and we lack jurisdiction over the BIA's refusal to reopen her removal proceedings sua sponte. Accordingly, we GRANT the Government's motion to deny in part and dismiss in part Patel's petition for review. The Government's motion to stay the briefing schedule is DENIED as moot.

PETITION DENIED IN PART, DISMISSED IN PART.

[1] In *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc), this Court adopted as binding precedent all decisions of the former Fifth Circuit handed down prior to close of business on September 30, 1981.