

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 16-60766
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

December 12, 2018

Lyle W. Cayce
Clerk

CARLOS ALBERTO LONDONO-GONZALEZ,

Petitioner

v.

MATTHEW G. WHITAKER, ACTING U. S. ATTORNEY GENERAL,

Respondent

Petition for Review of an Order of the
Board of Immigration Appeals
BIA No. A037 584 356

Before HIGGINBOTHAM, ELROD, and DUNCAN, Circuit Judges.

PER CURIAM:*

Carlos Alberto Londono-Gonzalez, a native and citizen of Columbia, seeks review of the decision of the Board of Immigration Appeals (BIA) denying his motion to reopen his removal proceedings based on its finding that he failed to establish the due diligence necessary to warrant equitable tolling of the 90-day deadline for such motions established by 8 U.S.C. § 1227(c)(7). Londono-Gonzalez was ordered removed from the United States in 2000 pursuant to

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

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8 U.S.C. § 1227(a)(2)(A)(iii) based on his federal drug trafficking convictions, which were aggravated felonies.

In 2016, Londono-Gonzalez moved to reopen his removal proceedings based on the BIA's decision in *Matter of Abdelghany*, 26 I. & N. Dec. 254 (2014). In *Abdelghany*, the BIA addressed the impact of the Supreme Court's decision in *INS v. St. Cyr*, 533 U.S. 289, 326 (2001), and its progeny, including *Vartelas v. Holder*, 566 U.S. 257, 273-75 (2012), and *Carranza-De Salinas v. Holder*, 700 F.3d 768, 772-74 (5th Cir. 2012), "upon individuals convicted after trial in order to provide a uniform nationwide rule" regarding the availability of relief under former § 212(c) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1182(c) (1994). 26 I. & N. Dec. at 266-69 & n.13 (quotation). The BIA dismissed Londono-Gonzalez's appeal from the immigration judge's denial of his motion, finding under *Lugo-Resendez v. Lynch*, 83, F.3d 337, 339 (5th Cir. 2016), which was decided while his BIA appeal was pending, that Londono-Gonzalez had not shown the requisite due diligence to warrant equitable tolling given that he waited more than three years after *Carranza-De Salinas* was decided to file his motion to reopen.

We have jurisdiction to review the denial of a motion to reopen seeking equitable tolling of the 90-day deadline to file the motion. *Mata v. Lynch*, 135 S. Ct. 2150, 2154-55 (2015); *Penalva v. Sessions*, 884 F.3d 521, 523 (5th Cir. 2018). The INA, 8 U.S.C. § 1252(a)(2)(C), however, strips us of jurisdiction to review the denial of such a motion if the alien is removable because he committed an offense covered in 8 U.S.C. §§ 1227(a)(2)(A)(iii). *Penalva*, 884 F.3d at 523. Section 1252(a)(2)(C)'s jurisdictional stripping provision, however, "does not extend to constitutional claims or questions of law raised upon a petition for review." *Penalva*, 884 F.3d at 523-24 (quoting § 1252(a)(2)(D)). We review de novo whether we have jurisdiction. *Id.* at 523.

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Because Londono-Gonzalez was removed pursuant to § 1227(a)(2)(A)(iii), we lack jurisdiction to review his claims other than for questions of law or constitutional claims. *See Penalva*, 884 F.3d at 523-24; §1252(a)(2)(C).

Londono-Gonzalez argues that the BIA erred in determining that *Vartelas* and *Carranza-De Salinas* were the operative cases from which to measure his due diligence efforts. His argument is a legal question over which we have jurisdiction. *See Penalva*, 884 F.3d at 524. As the BIA found, because *Carranza-De Salinas* directly affected Londono-Gonzalez's eligibility for § 212(c) relief, the BIA's subsequent decision in *Abdelghany* conferred no additional benefit on him and did not constitute a change in the law for purposes of measuring due diligence. Accordingly, Londono-Gonzalez's petition is DENIED IN PART.

Additionally, Londono-Gonzalez argues that the BIA applied the wrong due diligence standard and that he should be given an opportunity to further establish due diligence in light of *Lugo-Resendez*. Londono-Gonzalez's arguments amount to nothing more than his disagreement with the application of the due diligence standard thus constituting factual questions over which we have no jurisdiction. *See Penalva*, 884 F.3d at 526. Accordingly, Londono-Gonzalez's petition is DISMISSED IN PART for lack of jurisdiction.