IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit
FILED
February 21, 2018
Lyle W. Cayce
Clerk

No. 17-60086
Summary Calendar

DIGNA ELIZABETH MAIRENA-MILLER,

Petitioner

v.

JEFFERSON B. SESSIONS, III, U. S. ATTORNEY GENERAL,

Respondent

Petition for Review of an Order of the
Board of Immigration Appeals
BIA No. A200 001 265

Before BARKSDALE, PRADO, and OWEN, Circuit Judges.

PER CURIAM:*

Digna Elizabeth Mairena-Miller, a native and citizen of El Salvador, seeks review of the Board of Immigration Appeals' (BIA) dismissal of her appeal from an immigration judge's (IJ) denial of a motion to reopen her *in absentia* removal proceeding. She contends the 2005 *in absentia* removal order was improper because: she did not receive notice of her hearing; and traumatizing circumstances surrounding her entry into the United States

* Pursuant to 5th Cir. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5th Cir. R. 47.5.4.

prevented her from understanding that she was being placed in removal proceedings. She also asserts changed country conditions warrant reopening.

Denial of a motion to reopen is reviewed under a "highly deferential abuse-of-discretion standard, regardless of the basis of the alien's request for relief". *Gomez-Palacios v. Holder*, 560 F.3d 354, 358 (5th Cir. 2009). We "must affirm the BIA's decision as long as it is not capricious, without foundation in the evidence, or otherwise so irrational that it is arbitrary rather than the result of any perceptible rational approach". *Id.* The BIA's legal interpretations are reviewed *de novo*, and "factual findings are reviewed under the substantial-evidence test, meaning [we] may not overturn [them] unless the evidence compels a contrary conclusion". *Id.*

If an alien fails to appear at a scheduled hearing, and an IJ finds notice was provided and removability has been established, the IJ must order the alien removed *in absentia*. 8 U.S.C. § 1229a(b)(5)(A). Such an order may be rescinded in limited circumstances, including if the alien demonstrates she did not receive notice of the hearing. § 1229a(b)(5)(C)(ii).

In that regard, the alien must be provided written notice of the time and place at which the proceedings will be held, through either service in person or service by mail. § 1229(a)(1)(G)(i). The notice to appear (NTA), however, need not include the specific date and time of the removal hearing; the date and time of the hearing may be provided in a subsequent hearing notice. *E.g.*, *Gomez-Palacios*, 560 F.3d at 359. If the alien fails to provide her address, written notice is not required. § 1229(a)(2)(B).

The NTA personally served on Mairena: stated she would be required to appear before an IJ at a time and date to be set; advised her of the consequences for failure to appear at the hearing; and explained her obligation to inform the immigration court of her address. Mairena signed the NTA and

was orally advised in Spanish of her rights and obligations. Under these circumstances, there is no merit to her assertion that the NTA was defective. *E.g.*, *Gomez-Palacios*, 560 F.3d at 359. Moreover, because she failed to provide her address to the immigration court, written notice was not required. *E.g.*, § 1229(a)(2)(B); *Gomez-Palacio*s, 560 F.3d at 361; *Abarca-Orellana v. Holder*, 539 F. App'x 588, 589 (5th Cir. 2013). Mairena was, therefore, not entitled to reopening based on lack of notice.

The BIA rejected Mairena's next assertion—that reopening was warranted due to the traumatizing circumstances surrounding her entry into the United States—because her motion to reopen was untimely. The BIA ruled this assertion was best viewed as an "exceptional circumstances" claim, which must be pursued within 180 days of the *in absentia* removal order. But Mairena fails to discuss the issue of timeliness and thus has not addressed the basis of the BIA's rejection of this claim. She has therefore abandoned any such challenge. *E.g.*, *United States v. Scroggins*, 599 F.3d 433, 446–47 (5th Cir. 2010); *Soadjede v. Ashcroft*, 324 F.3d 830, 833 (5th Cir. 2003).

There is no time bar for Mairena's motion to the extent she sought reopening based on changed country conditions. 8 U.S.C. § 1229a(c)(7)(C)(ii); *Ramos-Lopez v. Lynch*, 823 F.3d 1024, 1026 (5th Cir. 2016). But, she bears a "heavy burden" of establishing such changed conditions, *Ramos-Lopez*, 823 F.3d at 1026, which she has not met, because she failed to compare, in any meaningful way, the conditions in El Salvador at the time of her initial removal hearing and the conditions in El Salvador when she filed her motion to reopen, *E.g.*, *id.*; *Panjwani v. Gonzales*, 401 F.3d 626, 633 (5th Cir. 2005). Additionally, the BIA properly analyzed whether the evidence established *prima facie* eligibility for asylum, because an alien seeking reopening to apply for asylum based upon changed country conditions must provide evidence establishing a

prima facie case for a grant of asylum. *Matter of J-G-*, 26 I. & N. Dec. 161, 169 (BIA 2013).

DENIED.