

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

No. 17-60485
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

June 7, 2018

Lyle W. Cayce
Clerk

AMADO DIAZ, also known as Florenzo Matara,

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. A090 967 641

Before HIGGINBOTHAM, JONES, and SMITH, Circuit Judges.

PER CURIAM:*

Petitioner Amado Diaz, a citizen of Mexico, adjusted to lawful permanent resident status in 1992, was convicted of possession of cocaine in 1994, and was deported in 1996 pursuant to an order of deportation issued by an Immigration Judge (IJ). In 2014, Diaz filed a motion to *sua sponte* reopen his deportation proceedings, asserting that intervening judicial developments undermined the basis for his deportation. An IJ denied the motion to reopen and the BIA

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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dismissed Diaz's appeal. The BIA then denied Diaz's motion to reconsider, concluding that Diaz could not file a statutory motion to reopen and that the "departure bar" regulation applied to his regulatory motion to *sua sponte* reopen. Diaz now petitions for review of the BIA's order denying his motion to reconsider. We review "the BIA's denial of a motion to reconsider under a highly deferential abuse of discretion standard." *Le v. Lynch*, 819 F.3d 98, 104 (5th Cir. 2016).

First, the BIA did not abuse its discretion by concluding that the departure bar regulation deprived it and the IJ of jurisdiction to consider his regulatory motion to *sua sponte* reopen. *See Lugo-Resendez v. Lynch*, 831 F.3d 337, 341-42 (5th Cir. 2016); *Navarro-Miranda v. Ashcroft*, 330 F.3d 672, 675-76 (5th Cir. 2003). Diaz cites no intervening change in the law that would allow this panel to overrule that binding precedent. *See Mercado v. Lynch*, 823 F.3d 276, 279 (5th Cir. 2016). His argument that his deportation now constitutes a gross miscarriage of justice in light of current law also fails to demonstrate that the application of the departure bar was an abuse of discretion. *See Gonzalez-Cantu v. Sessions*, 866 F.3d 302, 306 (5th Cir. 2017), *cert. denied*, 138 S. Ct. 677 (2018).

Second, Diaz challenges a determination regarding equitable tolling in the BIA's order dismissing his appeal of the IJ's order, but he has not filed a separate petition for review of that order. Consequently, we lack jurisdiction to consider that issue. *See Bright v. Holder*, 649 F.3d 397, 399 & n.1 (5th Cir. 2011); *Guevara v. Gonzales*, 450 F.3d 173, 176 (5th Cir. 2006).

Accordingly, the petition for review is DENIED IN PART and DISMISSED IN PART for lack of jurisdiction.