

United States Court of Appeals for the Fifth Circuit

No. 23-60356
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

January 23, 2024

Lyle W. Cayce
Clerk

NELSON IVAN CASTELLANO-MERCADO,

Petitioner,

versus

MERRICK GARLAND, *U.S. Attorney General,*

Respondent.

Petition for Review of an Order of the
Board of Immigration Appeals
Agency No. A079 044 052

Before ELROD, OLDHAM, and WILSON, *Circuit Judges.*

PER CURIAM:*

Nelson Ivan Castellano-Mercado, a native and citizen of Honduras, petitions this court for review of an order of the Board of Immigration Appeals (BIA) denying his motion to remand and his second motion to reopen. With one exception for battered family members, which is inapplicable here, an alien may file only one motion to reopen. 8 U.S.C.

* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

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§ 1229a(b)(5)(C)(ii), (c)(7)(A), (c)(7)(C)(iv); 8 C.F.R. § 1003.23(b)(4)(ii); *see Djie v. Garland*, 39 F.4th 280, 282–88 & n.2 (5th Cir. 2022). When, as is the case here, a motion to reopen is number-barred and the number bar is raised, the resulting petition for review should be denied. *Djie*, 39 F.4th at 287–88; *see Maradia v. Garland*, 18 F.4th 458, 462 n.6 (5th Cir. 2021). Castellano-Mercado fails to brief, and thus waives any challenge he may have had to, the denial of his motion for remand. FED. R. APP. P. 28(a)(8)(A); *see Chambers v. Mukasey*, 520 F.3d 445, 448 n.1 (5th Cir. 2008). Consequently, insofar as Castellano-Mercado petitions for review of the denial of his second motion to reopen and his motion to remand, the petition is DENIED. *See Djie*, 39 F.4th at 287–88.

The decision whether to reopen proceedings *sua sponte* is a discretionary one that this court lacks jurisdiction to review. *Qorane v. Barr*, 919 F.3d 904, 911–12 (5th Cir. 2019). Consequently, insofar as Castellano-Mercado petitions for review of the BIA’s decision not to reopen his proceedings *sua sponte*, the petition is DISMISSED. *See id.*

DENIED in part and DISMISSED in part.