United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
June 2, 2021
Lyle W. Cayce
Clerk

No. 20-60966
Summary Calendar

CLAUDIA MARIA SALINAS-HERNANDEZ,

Petitioner,

versus

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

Respondent.

Petition for Review of an Order of the
Board of Immigration Appeals
BIA No. A098 592 706

Before CLEMENT, HIGGINSON, and ENGELHARDT, *Circuit Judges*.

PER CURIAM:*

Claudia Maria Salinas-Hernandez, a native and citizen of El Salvador, petitions for review of an order of the Board of Immigration Appeals (BIA) dismissing her appeal of the immigration judge's denial of her motion to reopen her *in absentia* removal order. We review the denial of a motion to

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

reopen removal proceedings "under a highly deferential abuse-of-discretion standard." *Lugo-Resendez v. Lynch*, 831 F.3d 337, 340 (5th Cir. 2016) (internal quotation marks and citation omitted).

Seemingly challenging the agency's failure to grant relief on her claims that she received ineffective assistance from her abusive former boyfriend and from unnamed lawyers that she consulted with, but admittedly did not retain, Salinas-Hernandez asserts that, to the extent they are applicable to her, she complied with the requirements of *Matter of Lozada*, 19 I. & N. Dec. 637 (BIA 1988). This issue is unexhausted, as she did not raise it before the BIA, which did not address the *Lozada* requirements in its order. *See Omari v. Holder*, 562 F.3d 314, 318 (5th Cir. 2009); *Roy v. Ashcroft*, 389 F.3d 132, 137 (5th Cir. 2004). Because the BIA did not address *Lozada*, Salinas-Hernandez's contention that the BIA too rigidly interpreted the *Lozada* requirements raises an irrelevant issue that need not be considered. *See Bianchini v. Humble Pipe Line Co.*, 480 F.2d 251, 255 (5th Cir. 1973). Alternatively, if the BIA's decision is read as implicitly dealing with the *Lozada* requirements, Salinas-Hernandez's argument that the BIA erred lacks merit. *See Hernandez-Ortez v. Holder*, 741 F.3d 644, 647 (5th Cir. 2014).

Further, to the extent she argues that the BIA erred by rejecting her ineffective assistance claims because she was unable to recall information about her consultation with attorneys, Salinas-Hernandez misreads the BIA's order. Read in context, the BIA's comment was made in connection with its determination that Salinas-Hernandez had not established the necessary diligence to warrant equitable tolling.

Salinas-Hernandez does not challenge the BIA's determination that she did not provide an address to enable service of the notice of her removal hearing. *See* 8 U.S.C. § 1229(a)(1)(F)(i). Because she did not provide an address, the immigration court was not required to provide written notice of

the removal hearing. *See* 8 U.S.C. § 1229a(b)(5)(B). Accordingly, Salinas-Hernandez fails to show that she did not receive notice of the removal hearing within the meaning of § 1229a(b)(5)(C)(ii). *See Gomez-Palacios v. Holder*, 560 F.3d 354, 360-61 (5th Cir. 2009).

Given the above, to the extent that Salinas-Hernandez asserts that she established exceptional circumstances, her contention is unavailing because, pursuant to statute, she had only 180 days from the date of the order of removal to file a motion to reopen to rescind the *in absentia* removal based on exceptional circumstances. *See* § 1229a(b)(5)(C)(i). Her motion to reopen was filed over 13 years after the order of removal. Nonpermanent resident aliens ordered removed from the United States under federal immigration law may be eligible for discretionary relief. *See Niz-Chavez v. Garland*, 141 S. Ct. 1474 (2021). Given the lengthy and largely unexplained delay in filing the motion to reopen, Salinas-Hernandez has not shown error in the BIA's determination that equitable tolling is not warranted. *See Flores-Moreno v. Barr*, 971 F.3d 541, 543-45 (5th Cir. 2020).

The remaining argument to be considered[1] concerns whether Salinas-Hernandez demonstrated a material change in country conditions in El Salvador. *See* 8 U.S.C. § 1229a(c)(7)(C)(ii). Our review of the exhibits Salinas-Hernandez submitted in connection with her motion to reopen convinces us that she has not carried her "heavy burden to show changed country conditions for purposes of reopening removal proceedings." *Nunez v. Sessions*, 882 F.3d 499, 508 (5th Cir. 2018).

[1] Salinas-Hernandez's opening brief includes an addendum that lists four agency determinations she wishes to challenge; the one-page addendum includes no briefing. Issues not adequately argued in the body of the brief are deemed abandoned. *Yohey v. Collins*, 985 F.2d 222, 224-25 (5th Cir. 1993).

In view of the foregoing, the petition for review is DENIED IN PART and DISMISSED IN PART for lack of jurisdiction.