

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

October 27, 2026

Thomas B. Plunkett, III
Clerk

No. 25-60430

ALEXIS H. MORIANO-OSPINA,

Petitioner,

versus

TODD WALLACE BLANCHE, *U.S. Attorney General,*

Respondent.

Petition for Review of an Order of the
Board of Immigration Appeals
Agency No. A089 102 088

Before RICHMAN, HIGGINSON, and DOUGLAS, *Circuit Judges.*

PER CURIAM:*

Alexis H. Moriano-Ospina (“Moriano”) petitions for review of the decision of the Board of Immigration Appeals (“BIA”) denying his motion to reopen removal proceedings to allow him to apply for cancellation of removal. For the following reasons, the petition for review is DENIED in part and DISMISSED in part.

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

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I

Moriano, a native and citizen of Colombia, entered the United States on November 1, 2008, with his mother and siblings, at the age of twelve. The family was issued defective Notices to Appear (“NTAs”) shortly after arrival, and their pursuit of relief in U.S. immigration proceedings was unsuccessful.

On November 20, 2008, shortly after Moriano and his family entered the United States, Moriano, his mother, and his siblings were each issued an NTA that charged them with removability pursuant to Section 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (“INA”). *See* 8 U.S.C. § 1182(a)(7)(A)(i). Moriano indicates that the NTAs lacked the statutorily required hearing date and time. *See* 8 U.S.C. § 1229(a)(1)(G)(i). In a July 2009 hearing, Moriano’s mother admitted the allegations in the NTAs and conceded the removal charge. The family’s subsequent asylum and withholding of removal applications were denied in March 2010, and the BIA affirmed in September 2011. Moriano and his family sought review of the Board’s 2011 decision, and our court denied the petition for review. *Ospina-Ramirez v. Holder*, 479 F. App’x 562, 564 (5th Cir. 2012) (per curiam) (unpublished).

Moriano married a United States citizen in April 2021. In early 2025, Moriano began the process of seeking to regularize his status via an I-130 Petition for Alien Relative filed by his wife, which was received by United States Customs and Immigration Services on April 3. On March 25, 2025, Immigration and Customs Enforcement (“ICE”) detained Moriano during a routine check-in.

When Moriano contacted a lawyer following his March 2025 detention, Moriano learned that marriage to a U.S. citizen provided grounds for cancellation of removal. Moriano argued that the Board should consider

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his motion to reopen timely based on the doctrine of equitable tolling, due to his young age at the time of his removal order and his “lack of knowledge.”

The Board denied the motion, finding that Moriano failed to demonstrate the requisite extraordinary circumstances and failed to exercise reasonable diligence in pursuing his rights. The Board did not exercise its sua sponte authority to reopen Moriano’s immigration proceedings.

On appeal, Moriano claims that the BIA erred in (A) denying his motion to reopen his proceedings under 8 U.S.C. § 1252(a) and (B) failing to reopen his proceedings sua sponte.

II

With respect to Moriano’s second issue on appeal, we generally lack jurisdiction to review the Board’s decision not to reopen immigration proceedings sua sponte. *See Garcia Morin v. Bondi*, 152 F.4th 626, 631 (5th Cir. 2025) (citing *Qorane v. Barr*, 919 F.3d 904, 911–12 (5th Cir. 2019)). As we explain below, to the extent there may be narrow exceptions to this rule, Moriano does not show they apply.

Regarding Moriano’s first issue on appeal, we have jurisdiction to review the Board’s denial of the motion to reopen proceedings under 8 U.S.C. § 1252(a). *Banda-Ortiz v. Gonzales*, 445 F.3d 387, 338 (5th Cir. 2006). We review the Board’s denial of a motion to reopen “under a highly deferential abuse-of-discretion standard.” *Lugo-Resendez v. Lynch*, 831 F.3d 337, 340 (5th Cir. 2016); *Kucana v. Holder*, 558 U.S. 233, 242 (2010). Legal questions are considered de novo and factual findings are reviewed for substantial evidence. *Gonzalez Hernandez v. Garland*, 9 F.4th 278, 283 (5th Cir. 2021). The BIA “abuses its discretion when it issues a decision that is capricious, irrational, utterly without foundation in the evidence, based on legally erroneous interpretations of statutes or regulations, or based on

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unexplained departures from regulations or established policies.” *Lugo-Resendez*, 831 F.3d at 340 (citation modified).

III

Below we address Moriano’s two issues on appeal. First, we find that the BIA did not abuse its discretion in rejecting Moriano’s equitable-tolling argument; thus, we deny that part of his petition. Concerning Moriano’s second issue on appeal, Moriano has not demonstrated that the Board’s decision not to exercise its sua sponte authority to reopen his proceedings falls within any jurisdictional exceptions that would allow us to adjudicate that claim; accordingly, we dismiss that part of his petition.

A

The Board did not abuse its discretion in refusing to equitably toll Moriano’s motion to reopen. Moriano generally cited his young age at the time of his removal order and his “lack of knowledge about the opportunity to reopen his removal proceedings.” Because Moriano did not demonstrate that his young age caused his delayed filing and that he diligently pursued his rights, the Board properly declined Moriano’s request.

Generally, a motion to reopen BIA proceedings may be filed within ninety days of issuance of a final order of removal. 8 U.S.C. § 1229a(c)(7)(A), (C)(i); 8 C.F.R. § 1003.2(c)(2). The ninety-day statutory deadline, however, may be equitably tolled. *See Lugo-Resendez*, 831 F.3d at 343–44. “[A] litigant is entitled to equitable tolling of a statute of limitations only if the litigant establishes two elements: ‘(1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way and prevented timely filing.’” *Lugo-Resendez*, 831 F.3d at 344 (quoting *Menominee Indian Tribe of Wis. v United States*, 577 U.S. 250, 255 (2016)); *see also Holland v. Florida*, 560 U.S. 631, 649 (2010). “The first element requires the litigant to establish that he pursued his rights with reasonable diligence,

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not maximum feasible diligence,” and “the second element requires the litigant to establish that an extraordinary circumstance beyond his control prevented him from complying with the applicable deadline.” *Lugo-Resendez*, 831 F.3d at 344.

Concerning Moriano’s argument that his young age at the time the removal order was issued constitutes extraordinary circumstances, the BIA found that his young age may have justified his initial failure to file but not his subsequent delay in filing. On appeal, Moriano—who was fifteen years old when the BIA issued his final order of removal in 2011—states only that he “was entirely dependent on his parents” and did not know about opportunities to reopen his case until obtaining legal counsel in March 2025 at the age of twenty-nine. To justify equitable tolling, a petitioner must show that extraordinary circumstances “stood in his way and prevented timely filing.” *Lugo-Resendez*, 831 F.3d at 344 (citation modified). Without more detail regarding how his young age at the time of his removal order prevented him from filing for fourteen years, we cannot say that the BIA abused its discretion in denying his motion to reopen. *Prado-Majano v. Blanche*, 176 F.4th 335, 342 (5th Cir. 2026).

Turning to Moriano’s other justification for equitable tolling, his lack of knowledge regarding legal opportunities, Moriano has not shown that he exercised reasonable diligence in pursuing his rights. “Ignorance of the law and unfamiliarity with the legal process do not justify equitable tolling.” *Deras-Leon v. Barr*, 841 F. App’x 642, 645 (5th Cir. 2020) (per curiam) (unpublished) (citing *United States v. Petty*, 530 F.3d 361, 366 (5th Cir. 2008) (per curiam)). Moriano argues that his circumstances merit equitable tolling because he “was unaware that his marriage to a U.S. citizen provided a path to reopening his removal proceedings” prior to March of 2025 when he obtained legal counsel, at which time he acted swiftly to reopen his case. However, Moriano points to no facts indicating that he exercised reasonable

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diligence to discover methods to reopen his removal proceedings in the several years prior to obtaining counsel; thus, the Board did not abuse its discretion in rejecting Moriano's equitable tolling argument. *See Rubio Amaya v. Barr*, 772 F. App'x 216, 217 (5th Cir. 2019) (per curiam) (unpublished) (citing *Gonzalez-Cantu v. Sessions*, 866 F.3d 302, 305 (5th Cir. 2017)); *Artiga Minera v. Bondi*, No. 24-60455, 2020 WL 14050613, at *3 (5th Cir. Aug. 6, 2022) (per curiam) (unpublished).

Absent further explanation as to how Moriano's young age and lack of knowledge caused his delayed filing, we cannot say that the Board "issue[d] a decision that is capricious, irrational, utterly without foundation in the evidence, based on legally erroneous interpretations of statutes or regulations, or based on unexplained departures from regulations or established policies." *Lugo-Resendez*, 831 F.3d at 340 (citation modified).

B

Moriano also argues that the BIA erred in not reopening his proceedings sua sponte. The decision to reopen proceedings sua sponte is purely within the Board's discretion. *See Qorane*, 919 F.3d at 912. At any time, the BIA may "reopen or reconsider on its own motion any case in which it has rendered a decision." *Id.* at 911 (quoting 8 C.F.R. § 1003.2(a)). The Board typically requires a petitioner to indicate exceptional circumstances justifying use of the sua sponte authority to reopen. *Id.* Generally, our court lacks jurisdiction to review the Board's sua sponte authority to reopen proceedings "because there is no legal standard against which to judge that decision." *Mejia v. Whitaker*, 913 F.3d 482, 490 (5th Cir. 2019) (citation modified). Accordingly, we cannot evaluate Moriano's claim that the Board should have found that he demonstrated "exceptional circumstances."

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In his reply brief, Moriano cites to two circumstances in which we have found jurisdiction to review the Board's exercise of sua sponte authority: when a claim of legal error, such as a refusal to entertain equitable tolling at all, or constitutional error is involved. *See Rodriguez-Saragosa v. Sessions*, 904 F.3d 349, 355 (5th Cir. 2018); *Mejia*, 913 F.3d at 490. Moriano, however, unconvincingly argues that his appeal falls under either exception. Thus, these cases do not afford us a jurisdictional hook to assess Moriano's claim.

Because we lack jurisdiction to review the Board's decision not to sua sponte reopen Moriano's proceedings, we dismiss that portion of Moriano's petition. *See Garcia Morin*, 152 F.4th at 631 (dismissing portion of petition on same grounds).

IV

For the foregoing reasons, we DENY Moriano's petition in part and DISMISS the petition in part.