

United States Court of Appeals
for the Fifth Circuit

No. 25-60702

United States Court of Appeals
Fifth Circuit

FILED

October 8, 2026

Thomas B. Plunkett, III
Clerk

MOHAMMAD ISLAM,

Petitioner,

versus

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

Respondent.

Petition for Review of an Order of the Board of Immigration Appeals
Agency No. A249 142 746

Before ELROD, *Chief Judge*, RICHMAN, and RAMIREZ, *Circuit Judges*.

PER CURIAM:*

Mohammad Islam, a citizen and national of Bangladesh, seeks review of the Board of Immigration Appeals' (BIA) dismissal of his appeal from an immigration judge's (IJ) finding that he had abandoned his applications for asylum, withholding of removal, and protection under the Convention Against Torture (CAT). We DENY the petition for review.

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

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I

A

Islam entered the United States on December 14, 2024. An order for his expedited removal was vacated after Islam demonstrated a credible fear of persecution. On February 26, 2025, Islam was served with a notice to appear charging him with two grounds of inadmissibility.

Islam appeared pro se for his master calendar hearing on May 7, 2025. At the hearing, the IJ ordered Islam to file his application for relief on or before May 15, 2025. The IJ specifically advised Islam that, “[i]f the court d[id] not receive [Islam’s] applications by May 15[,] they w[ould] be deemed abandoned and [Islam] w[ould] be ordered removed without any further hearing.” Islam confirmed his understanding. When Islam’s application was not received by the deadline, the IJ ordered Islam removed to Bangladesh that same day. Islam’s application ultimately arrived on May 28, 2025.

B

Islam appealed the IJ’s decision to the BIA on June 13, 2025. His supporting brief alleged that, with his family’s help, he had hired an attorney on May 8, 2025. His attorney prepared an asylum application and delivered it to Islam’s family on May 9, 2025, and they mailed it to him on May 10, 2025. The mailing arrived at the detention center on May 12, 2025, and by May 13, 2025, Islam had signed and delivered the completed application to a detention officer for mailing. The detention officer assured Islam the application had been sent out. On May 15, 2025, the deadline, Islam’s attorney called the immigration court to confirm its receipt of the application. After learning the application had not yet been received, his attorney attempted to file it electronically but was unsuccessful because Islam had already been ordered removed by that afternoon. Islam included a copy of his

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completed Form I-589, and a photo of a mailing receipt dated May 10, 2025, with his brief.

The BIA construed Islam’s brief as incorporating a motion to remand, subject to the same evidentiary requirements as a motion to reopen. It noted that Islam submitted no “affidavit evidence or proof of mailing” to support his allegation that he mailed his application on May 13, 2025. Because he failed to submit “significant evidence, such as affidavits” that “demonstrate[ed] that he took steps to comply with the deadline before May 15, 2025,” the BIA rejected Islam’s argument that “he was not provided the full time to comply with the deadline because the [IJ] ordered [Islam] removed in the afternoon on May 15, 2025.” It gave no evidentiary weight to the mailing receipt dated May 10, 2025, because it did not specify the contents of the mailed package. And because Islam “ha[d] been in the United States since December of 2024, and in removal proceedings since February of 2025,” the BIA concluded that Islam “had significant time to complete and file an asylum application prior to May of 2025.” Based on its finding that he failed to establish good cause for missing the filing deadline, the BIA dismissed Islam’s appeal on November 20, 2025. Islam timely filed a petition for review.

II

Islam first argues the BIA abused its discretion by finding he failed to establish good cause for his untimely filing.

“We must begin by determining whether we have jurisdiction to review the BIA’s decision” *Penalva v. Sessions*, 884 F.3d 521, 523 (5th Cir. 2018) (quoting *Nehme v. INS*, 252 F.3d 415, 420 (5th Cir. 2001)). We review the question of jurisdiction *de novo*. *Id.* Although we cannot normally review a “decision or action of the Attorney General or the Secretary of

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Homeland Security” made discretionary by *statute*,¹ federal regulations provide the discretionary authority the Attorney General enjoys deciding motions to remand. *See Lopez-Barerra v. Blanche*, 187 F.4th 239, 243 (5th Cir. 2026) (clarifying § 1252(a)(2)(B)(ii)’s jurisdictional bar applies to “statutory, but not regulatory, grants of discretionary authority”); 8 C.F.R. § 1003.31(h) (granting IJs regulatory discretion to “set and extend time limits for the filing of applications and related documents and responses thereto, if any”). We have jurisdiction to review Islam’s first claim. *See id.*

A

“Historically, ‘we review the denial of a motion to remand under a highly deferential abuse-of-discretion standard.’” *Ikome v. Bondi*, 128 F.4th 684, 690 (5th Cir. 2025) (quoting *Zhao v. Gonzales*, 404 F.3d 295, 303 (5th Cir. 2005)). “It is our duty to allow [a] decision to be made by the Attorney General’s delegate, even a decision that we deem in error, so long as it is not capricious, racially invidious, utterly without foundation in the evidence, or otherwise so aberrational that it is arbitrary rather than the result of any perceptible rational approach.” *Osuchukwu v. INS*, 744 F.2d 1136, 1142 (5th Cir. 1984). We review the BIA’s decision and will consider the IJ’s underlying decision only to the extent it impacted the BIA’s decision. *Sharma v. Holder*, 729 F.3d 407, 411 (5th Cir. 2013).

¹ *See* 8 U.S.C. § 1252(a)(2)(B)(ii) (“Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, and except as provided in subparagraph (D), and regardless of whether the judgment, decision, or action is made in removal proceedings, no court shall have jurisdiction to review . . . any other decision or action of the Attorney General or the Secretary of Homeland Security the authority for which is specified *under this subchapter* to be in the discretion of the Attorney General or the Secretary of Homeland Security, other than the granting of relief under section 1158(a) of this title.” (emphasis added)).

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B

“[IJs] have broad discretion to conduct and control immigration proceedings and to admit and consider relevant and probative evidence.” *Matter of Interiano-Rosa*, 25 I. & N. Dec. 264, 265 (BIA 2010). That includes “set[ting] and extend[ing] time limits for the filing of applications and related documents and responses thereto” and “deem[ing] waived” any application or document “not filed within the time set by the IJ.” 8 C.F.R. § 1003.31(h).

Islam was required to file a motion to remand or reopen accompanied by a completed application that established “a prima facie claim for any form of relief,” and evidence to establish good cause for his failure to timely file his application. *Matter of R-C-R*, 28 I. & N. Dec. 74, 77–79 (BIA 2020) (stating that “[h]ad the respondent filed either type of motion and provided good cause for missing the deadline, reconsideration or reopening by the [IJ] would likely have been appropriate”). As noted, the BIA construed Islam’s brief on appeal as incorporating a motion to remand. A motion to remand seeking leave to submit a new application or present additional evidence that was unavailable at the initial hearing “is subject to the same standards and regulations governing motions to reopen.” *Ramchandani v. Gonzales*, 434 F.3d 337, 340 n.6 (5th Cir. 2005) (citing *In re Coelho*, 20 I. & N. Dec. 464, 471 (BIA 1992)). Motions to reopen “shall state the new facts” and “be supported by affidavits or other evidentiary material.” 8 U.S.C. § 1229a(C)(7)(B).

Islam’s evidence consisted of his statements in the brief and a photo of a mailing receipt dated May 10, 2025. Unsworn attorney statements in briefs or motions are not entitled to evidentiary weight. *INS v. Phinpathya*, 464 U.S. 183, 188–89 n.6 (1984); *see also Matter of S-M-*, 22 I. & N. Dec. 49, 51 (BIA 1998) (“[S]tatements in a brief, motion, or Notice of Appeal are not evidence and thus are not entitled to any evidentiary weight.”). And the

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mailing receipt did not specify the contents of the package that had been shipped. The BIA’s finding that Islam “provide[d] no affidavit evidence or proof of mailing to support his claim that he timely mailed his application” is supported by the record. Because the ruling is not “capricious, racially invidious, utterly without foundation in the evidence, or otherwise so aberrational that it is arbitrary,” we decline to disturb it. *Osuchukwu*, 744 F.2d at 1142.

III

Islam next argues that he was denied due process because the BIA did not excuse his untimely filing and remand the case for the IJ to consider the merits of his application. Here, our review is *de novo*. *Santos-Alvarado v. Barr*, 967 F.3d 428, 439 (5th Cir. 2020).

“To satisfy due process, ‘removal proceedings must be conducted according to standards of fundamental fairness,’ which ‘include[] an alien’s right to a full and fair hearing.’” *Id.* (quoting *Vetcher v. Barr*, 953 F.3d 361, 370 (5th Cir. 2020), *cert. denied*, 141 S. Ct. 844 (2020)) (alteration in original). “To prevail on a claim regarding an alleged denial of due process rights, an alien must make an initial showing of substantial prejudice,” which requires “a prima facie showing that the alleged violation affected the outcome of the proceedings.” *Okpala v. Whitaker*, 908 F.3d 965, 971 (5th Cir. 2018) (citations omitted).

Islam asserts that the “absence of a meaningful inquiry to whether good cause existed, or whether prejudice would result from strict [filing deadline] enforcement, rendered the proceeding fundamentally unfair in violation of due process.” The record reflects that the BIA considered Islam’s brief and mailing receipt but determined that they did not sufficiently support his claim that he timely mailed his application.

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Even if a due process violation had occurred, Islam still had to show substantial prejudice; he was required to “make a prima facie showing that he was eligible for asylum,” withholding of removal, and protection under CAT, and “that he could have made a strong showing in support of his application.” *Anwar v. INS*, 116 F.3d 140, 144 (5th Cir. 1997) (citing *Miranda-Lores v. INS*, 17 F.3d 84, 85 (5th Cir. 1994)).

Islam argues that he “suffered clear prejudice” and that the allegations in his application of “repeated physical attacks, death threats, political targeting, and loss of state protection following the fall of the Awami League government” established a “colorable claim for relief.” These conclusory statements do not rise to a prima facie showing that he would have been entitled to relief. *See Johal v. Holder*, 532 F. App’x 578, 579 (5th Cir. 2013) (determining conclusory assertions of how the documents would have corroborated the petitioner’s claims are insufficient to establish substantial prejudice) (unpublished). That “counsel’s ‘record of submission shows a completed Application,’” absent more, “is irrelevant because the official record has an incomplete application; and, obviously, ‘[s]tatements [made] by counsel in briefs are not evidence[.]’” *Carrero-Marroquin v. Garland*, No. 23-60646, 2024 WL 3965881 (5th Cir. Aug. 28, 2024) (quoting *Skyline Corp. v. NLRB*, 613 F.2d 1328, 1337 (5th Cir. 1980)). Islam fails to meet his burden to demonstrate substantial prejudice

VI

Finally, review of a final order of removal is available only if a noncitizen has exhausted all administrative remedies available to them “as of right” before appealing to the courts. 8 U.S.C. § 1252(d)(1).

Here, Islam’s allegation the BIA erred in “failing to credit” his alleged compliance with the prisoner mailbox rule presents “a wholly new ground for relief arising only as a consequence of some error in the deportation

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proceedings” that the BIA “never had a chance to consider.” *Dale v. Holder*, 610 F.3d 294, 298–99 (5th Cir. 2010). The same is true of his equitable tolling arguments. Because these alleged errors were not “raised in the first instance before the BIA,” “this court is deprived of jurisdiction to consider whether the BIA committed legal error.” *Id.* See *Calderon-Uresti v. Bondi*, 158 F.4th 663, 671–72 (5th Cir. 2025) (“Calderon-Uresti never raised regular rule cancellation arguments in her appeal before the BIA. That means we have no jurisdiction to consider them here.”). We lack jurisdiction to consider Islam’s mailbox rule and equitable tolling claims.

* * *

The petition for review is DENIED.