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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ROSALBA CORONA VASQUEZ,

Petitioner,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 05-72304

Agency No. A077-820-110

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Argued and Submitted April 17, 2009
San Francisco, California

Before: D.W. NELSON, BERZON and CLIFTON, Circuit Judges.

Rosalba Corona Vasquez, a citizen of Mexico, petitions for review of an order of the Board of Immigration Appeals (“BIA”), simultaneously dismissing her appeal of an immigration judge’s (“IJ”) order granting voluntary departure and denying her motion to reopen, which the BIA treated as a motion to remand.

Corona argues that the IJ violated the applicable regulations and her due process

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

rights by failing to advise her of her eligibility to apply for asylum. For the reasons provided below, we disagree.

1. Although Corona did not cite the relevant regulatory provision in her filings before the BIA, she presented a sufficiently clear explanation of what, in her view, the IJ did wrong to put the BIA on notice of her claims. *See Socop-Gonzalez v. INS*, 272 F.3d 1176, 1183-84 (9th Cir. 2001) (“We hold that even though Socop never specifically invoked the phrase ‘equitable tolling’ in his briefs to the BIA, he sufficiently raised the issue before the BIA to permit us to review the issue on appeal.”). Corona has therefore exhausted her administrative remedies.

2. IJs are required by regulation to advise aliens that they may apply for asylum or withholding of removal if (1) “the alien expresses fear of persecution or harm upon return to any of the countries to which the alien might be removed,” and (2) “the alien has not previously filed an application for asylum or withholding of removal that has been referred to the immigration judge by an asylum officer.” 8 C.F.R. § 1240.11(c)(1). Corona argues that her fear of persecution was “expresse[d]” in the letter attached to her husband’s application for asylum, thus triggering the IJ’s advisal obligation. *Id.* The letter, however, discusses only Corona’s *husband’s* fear for his safety and that of his family. Neither in that letter, nor in any other document submitted to the IJ, nor in any of the proceedings before

the IJ did Corona herself “express[] fear of persecution or harm upon return” to Mexico. *Id.*

On the contrary, at the same hearing in which her husband withdrew his application for asylum, Corona withdrew her application for cancellation of removal and sought voluntary departure to Mexico. Before granting voluntary departure, the IJ expressly confirmed Corona’s understanding that “the only alternative relief that you will have is voluntary departure[.]” Corona answered, “Yes.” Corona and her husband were represented by counsel throughout the proceedings, and Corona has not made any claim of ineffective assistance of counsel. Under these circumstances, Corona’s failure to express any fear of returning to Mexico means that the IJ’s regulatory obligation under 8 C.F.R. § 1240.11(c) was never triggered.

3. Nor did the IJ deprive Corona of her due process right to a fair hearing. We have held that “[f]ailing to notify individuals who are subject to deportation that they have the right to apply for asylum . . . violates both INS regulations and the constitutional right to due process,” *Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999), but we have never held that the constitutional right to due process requires anything more than is required by 8 C.F.R. § 1240.11(c). Even if due process does require something more under certain

circumstances, we can discern no due process violation here. Corona was represented by counsel throughout, has never alleged that her representation was inadequate, *cf. Andriasian*, 180 F.3d at 1041 (citing *Kossov v. INS*, 132 F.3d 405, 408-09 (7th Cir. 1998)), and was expressly advised by the IJ of the consequences of her and her husband's withdrawals of their applications for relief.¹ We therefore conclude that the IJ did not violate Corona's due process rights.

DENIED.

¹We do not reach the question of prejudice. *See Agyeman v. INS*, 296 F.3d 871, 884-85 (9th Cir. 2002).