

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

APR 14 2023

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

JOSE ANGEL HERNANDEZ-SANCHEZ,

No. 21-1039

Petitioner,

Agency No. A206-403-140

v.

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

MEMORANDUM*

Respondent.

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

Submitted April 12, 2023**
Pasadena, California

Before: W. FLETCHER, LEE, and MENDOZA, Circuit Judges.

Petitioner Jose Angel Hernandez-Sanchez, a native and citizen of Mexico, petitions for review of a Board of Immigration Appeals (“BIA”) decision denying his motion to reopen removal proceedings. “We review the BIA’s denial of a motion to reopen for an abuse of discretion.” *Agonafer v. Sessions*, 859 F.3d 1198, 1203 (9th Cir. 2017). We have jurisdiction under 8

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

U.S.C. § 1252, and we deny the petition for review.

The BIA did not abuse its discretion in denying Hernandez-Sanchez’s motion to reopen based on changed country conditions. To prevail on such a motion, “[a] petitioner must (1) produce evidence that conditions have changed in the country of removal; (2) demonstrate that the evidence is material; (3) show that the evidence was not available and would not have been discovered or presented at the previous hearings; and (4) ‘demonstrate that the new evidence, when considered together with the evidence presented at the original hearing, would establish prima facie eligibility for the relief sought.’” *Id.* at 1204 (quoting *Toufighi v. Mukasey*, 538 F.3d 988, 996 (9th Cir. 2008)). “If [the allegedly new information] was available or capable of being discovered [during the original hearing], it cannot provide a basis for reopening.” *Goel v. Gonzales*, 490 F.3d 735, 738 (9th Cir. 2007).

The BIA did not err in holding that the petitioner did not produce evidence that country conditions have changed to warrant reopening. In any event, Hernandez-Sanchez also failed to show the evidence he presented was unavailable or undiscoverable at the time of his April 2019 hearing. With his motion to reopen, Hernandez-Sanchez provided a 2020 notarized statement from his uncle that two of Hernandez-Sanchez’s cousins had disappeared—one in 2013 and the other in 2017—and that the uncle had observed “a lot of insecurity and delinquency” in Los Zapotes, Michoacán. He did not argue before the BIA, nor does he before this court, that he was unaware of his

cousins' disappearances before his hearing or provide a reason he did not previously provide this information. Accordingly, the BIA did not abuse its discretion in concluding that it was not new evidence. *Id.* at 738 (finding evidence about events that allegedly occurred well before the IJ hearing did not constitute new evidence without any explanation as to why the evidence was previously unavailable).

Additionally, Hernandez-Sanchez has not established how his uncle's statement about the insecurity in Los Zapotes constitutes new evidence that was unavailable or undiscoverable at the time of his hearing, or how it establishes a change in country conditions. His uncle did not indicate whether the insecurity he observed reflected a change since April 2019 or was the continuation of ongoing violence. Therefore, the BIA did not abuse its discretion in concluding this was not evidence of changed country conditions. *Rodriguez v. Garland*, 990 F.3d 1205, 1210 (9th Cir. 2021) ("General references to 'continuing' or 'remaining problems' is not evidence of a *change* in a country's conditions.").

Lastly, the BIA did not abuse its discretion in denying Hernandez-Sanchez's motion to reopen because he did not establish prima facie eligibility for asylum. Hernandez-Sanchez failed to show the necessary nexus between his fear of persecution and membership in a particular social group. *See Madrigal v. Holder*, 716 F.3d 499, 503, 505 (9th Cir. 2013). He did not show how general violence in Mexico and the disappearances of his cousins created a likelihood he would be persecuted based on his membership in his family. *See*

Arriaga-Barrientos v. U.S.I.N.S., 937 F.2d 411, 414 (“violence [against family members must] create a pattern of persecution closely tied to the petitioner” to establish a well-founded fear of persecution).

Accordingly, the BIA did not abuse its discretion in denying Hernandez-Sanchez’s motion to reopen.

The temporary stay of removal remains in place until the mandate issues.

PETITION DENIED.