

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

APR 24 2023

FOR THE NINTH CIRCUIT

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

JAVIER RAMIREZ-RIVERA,

No. 20-71691

Petitioner,

Agency No. A096-027-236

v.

MEMORANDUM*

MERRICK B. GARLAND, Attorney
General,

Respondent.

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

Submitted April 17, 2023**

Before: CLIFTON, R. NELSON, and BRESS, Circuit Judges.

Javier Ramirez-Rivera, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' ("BIA") order denying his motion to reopen removal proceedings. Our jurisdiction is governed by 8 U.S.C. § 1252. We review

* 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).

de novo questions of law. *Bonilla v. Lynch*, 840 F.3d 575, 581 (9th Cir. 2016).

We deny in part and dismiss in part the petition for review.

Our jurisdiction to review the BIA’s denial of a motion to reopen *sua sponte* is limited to determining whether the BIA based its decision on legal or constitutional error. *Id.* at 581-82. Ramirez-Rivera has not shown any legal error underlying the BIA’s determination that he failed to establish an exceptional situation exists where he failed to promptly respond to a change in law. *See Lona v. Barr*, 958 F.3d 1225, 1234-35 (9th Cir. 2020) (“[T]he Board is not *required* . . . to reopen proceedings *sua sponte* in exceptional situations, even those involving a fundamental change in the law.”) (internal citations and quotations omitted). To the extent that Ramirez-Rivera contends the BIA erred in failing to consider he did not present the change in law earlier due to ineffective assistance of counsel, we lack jurisdiction to consider the contention because he failed to raise the issue before the BIA. *See Bare v. Barr*, 975 F.3d 952, 960 (“What matters is that the BIA was sufficiently on notice so that it ‘had an opportunity to pass on this issue.’” (internal citation omitted)).

Because this determination is dispositive of his claim, we do not address Ramirez-Rivera’s remaining contentions regarding whether he established *prima facie* eligibility for relief. *See Simeonov v. Ashcroft*, 371 F.3d 532, 538 (9th Cir.

2004) (courts are not required to decide issues unnecessary to the results they reach).

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

PETITION FOR REVIEW DENIED in part; DISMISSED in part.