

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

MAY 16 2023

FOR THE NINTH CIRCUIT

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

MARTINEZ LEMOS, ET AL.,

No. 22-669

Petitioners,

Agency Nos. A206-372-167

v.

A206-372-166

A206-372-168

MERRICK B. GARLAND, Attorney
General,

A206-372-169

A206-372-170

A206-372-171

Respondent.

MEMORANDUM*

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

Submitted May 11, 2023**
Seattle, Washington

Before: TALLMAN, CLIFTON, and IKUTA, Circuit Judges.

Esmeralda Martinez Lemos and her five children, natives and citizens of Mexico, petition for review of the decision of the Board of Immigration Appeals to deny her motion to reopen. We have jurisdiction under 8 U.S.C. § 1252, and we deny the petition for 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).

Petitioner previously applied for asylum, withholding of removal, and protection under the Convention Against Torture (“CAT”). Those applications were denied by the agency, and Petitioner was ordered removed. Three years ago, this Court denied a petition for review from that order. *Martinez Lemos v. Barr*, 812 Fed. App’x 546 (9th Cir. 2020).

Soon thereafter, Petitioner filed a motion to reopen her removal proceedings with the BIA. The BIA denied that motion to reopen, holding that Petitioner’s motion to reopen was untimely, rejecting Petitioner’s argument that the tardy filing should be excused based on changed country conditions in Mexico, and concluding that Petitioner had not established prima facie eligibility for relief as required for a motion to reopen.

We review the BIA’s decision to deny the motion to reopen for an abuse of discretion. *Silva v. Garland*, 993 F.3d 705, 717–18 (9th Cir. 2021). We “review its factual findings for substantial evidence.” *Najmabadi v. Holder*, 597 F.3d 983, 986 (9th Cir. 2010).

Substantial evidence supports the BIA’s determination that Petitioner’s evidence did not show “changed conditions” but instead showed evidence of continued crime and violence in Mexico that had already been considered by the Immigration Judge and the BIA during Petitioner’s previous proceedings. *See Rodriguez v. Garland*, 990 F.3d 1205, 1210 (9th Cir. 2021). Because Petitioner

failed to “produce evidence that conditions had changed in [Mexico],” the BIA did not abuse its discretion when it denied her motion to reopen. *Feng Gui Lin v. Holder*, 588 F.3d 981, 986 (9th Cir. 2009).

In addition, the BIA did not abuse its discretion in concluding that Petitioner did not show prima facie eligibility for the relief sought. As the BIA held, the particular social group proposed by Petitioner was not cognizable.

PETITION DENIED.