NOT FOR PUBLICATION

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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JUANA MARIA ARROYO-CERON; MARIO SANTILLAN-ARROYO, Petitioners, v. MERRICK B. GARLAND, Attorney General, Respondent.	No. 21-604 Agency Nos. A095-690-033 A095-718-052 MEMORANDUM*

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

Submitted June 27, 2023**
Pasadena, California

Before: N.R. SMITH, LEE, and VANDYKE, Circuit Judges.

Juana Maria Arroyo-Ceron and her adult son, Mario Santillan-Arroyo, are natives and citizens of Mexico. They seek review of an order by the Board of Immigration Appeals (BIA) denying their third motion to reopen removal

* 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).

proceedings. The petitioners contend that the BIA abused its discretion by concluding that their evidence of changed country conditions failed to support their untimely and number-barred motion to reopen. We have jurisdiction under 8 U.S.C. § 1252, and we deny the petition for review.

The petitioners unlawfully entered the United States in 1997, and the government initiated removal proceedings against them in 2008. Following a merits hearing on December 6, 2011, an immigration judge denied the petitioners' applications for cancellation of removal and granted voluntary departure. The petitioners appealed that decision to the BIA, and the appeal was dismissed on September 7, 2012. The petitioners filed two motions to reopen. The BIA denied both.

On March 28, 2019, the petitioners filed their third motion to reopen. Although this motion was untimely and number-barred, the petitioners argued that the BIA could still consider it because materially changed country conditions in Mexico supported new claims for asylum, withholding of removal, or protection under the Convention Against Torture (CAT). But the BIA denied this motion too. It concluded that the petitioners failed to present sufficient evidence to establish changed country conditions.

1. The BIA did not abuse its discretion by denying the petitioners' motion to reopen because they failed to establish changed country conditions. *Rodriguez v. Garland*, 990 F.3d 1205, 1209 (9th Cir. 2021) (standard of review). Even if a motion to reopen is untimely and number-barred (as is the case here), a petitioner

can still rely on the changed-country-conditions exception. To meet this exception, a petitioner must "clear four hurdles: (1) he must produce evidence that country conditions have changed, (2) the evidence must be material, (3) the evidence must not have been available previously, and (4) the new evidence would establish prima facie eligibility for the relief sought." *Id.* (cleaned up); 8 U.S.C. § 1229a(c)(7)(C)(ii).

Here, the petitioners contend that country conditions in Mexico have materially changed because the country has seen increased organized-crime activity as well as increased mistreatment of persons with disabilities and deteriorating health. The petitioners support their contention by relying on personal declarations and a 2017 human rights report.

The BIA reasonably concluded that the petitioners' proffered evidence did not establish changed country conditions. The BIA correctly discarded the personal declarations because they focused on circumstances outside of the relevant period—2011 to 2019. *Salim v. Lynch*, 831 F.3d 1133, 1137 (9th Cir. 2016) (stating that the relevant circumstances are those that occur between the previous hearing and the motion to reopen). And the 2017 report alone is insufficient to establish changed country conditions. That is because the report may provide a picture of the current conditions in Mexico, but that is only one side of the equation; without any evidence of conditions in 2011, the petitioners fail to meet the requirement for reopening that conditions have *changed* since 2011. *Rodriguez*, 990 F.3d at 1209–10. Finally, Ms. Arroyo-Ceron's statement

that her health has deteriorated since the merits hearing does not advance her claim, as a change in personal circumstances does not eliminate the requirement for a change in country conditions. *See id.* at 1209 ("[A] petitioner cannot succeed on [a motion to reopen] that 'relies *solely* on a change in personal circumstances,' without also providing sufficient evidence of related changed country conditions." (quoting *Chandra v. Holder*, 751 F.3d 1034, 1036 (9th Cir. 2021))).

In addition, the BIA's generous reading of the 2017 report—that it may establish a "continuation of problems" for persons "with disabilities or deteriorating health"—does not undermine its decision to deny the motion to reopen. *See id.* at 1210 ("General references to 'continuing' or 'remaining' problems is not evidence of a *change* in a country's conditions." (citing *Najmabadi v. Holder*, 597 F.3d 983, 989 (9th Cir. 2010))).

2. We will not consider the petitioners' arguments related to the 2010 human rights report because they are unexhausted. The petitioners failed to mention the 2010 report in their motion to reopen and thus did not put the BIA on notice that any contrast between the 2010 and 2017 reports was at issue. *See Bare v. Barr*, 975 F.3d 952, 960 (9th Cir. 2020).

PETITION DENIED.