

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

AUG 8 2023

FOR THE NINTH CIRCUIT

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

ANWARUL HASSAN,

No. 17-72560

Petitioner,

Agency No. A070-914-854

v.

MEMORANDUM*

MERRICK B. GARLAND, Attorney
General,

Respondent.

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

Submitted July 20, 2023**
Pasadena, California

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

Anwarul Hassan (“Hassan”),¹ a native and citizen of Bangladesh, petitions for review of the Board of Immigration Appeals’ (“BIA”) decision denying his third motion to reopen. We deny the petition in part and dismiss it in part.

* 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).

¹ The Clerk of Court is **DIRECTED** to amend the caption to reflect Petitioner’s name as Anwarul Hassan.

1. The BIA did not abuse its discretion in concluding that Hassan’s motion to reopen is barred by time and numerical limits. *See* 8 C.F.R. § 1003.2(c)(2); *Singh v. Holder*, 658 F.3d 879, 884–85 (9th Cir. 2011). Hassan filed his third motion to reopen on October 24, 2016, more than two decades after the Immigration Judge’s decision finding him deportable. He did not argue in his motion that he is eligible for any of the exceptions to the filing limits. *See* 8 C.F.R. § 1003.2(c)(3). As the government maintains, we may not consider the unexhausted arguments regarding ineffective assistance of counsel and asylum raised for the first time in his opening brief. *See* 8 U.S.C. § 1252(d)(1); *cf. Santos-Zacaria v. Garland*, 143 S. Ct. 1103, 1116 (2023).

2. To the extent that Hassan challenges the BIA’s decision to not use its *sua sponte* authority to reopen proceedings, we lack jurisdiction to consider this challenge, as Hassan does not identify any legal or constitutional error with the BIA’s determination that no “exceptional situation” warrants reopening. *See Bonilla v. Lynch*, 840 F.3d 575, 587–88 (9th Cir. 2016).

DENIED IN PART, DISMISSED IN PART.