

NOT FOR PUBLICATION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

KENY ELIZABETH CARRILLO,

Petitioner,

v.

MERRICK B. GARLAND, Attorney
General,

Respondent.

No. 21-1239

Agency No.
A098-988-622

MEMORANDUM*

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

Submitted July 18, 2023**

Before: SCHROEDER, RAWLINSON, and BADE, Circuit Judges.

Keny Elizabeth Carrillo, a native and citizen of El Salvador, petitions pro se for review of the Board of Immigration Appeals’ (“BIA”) order denying her motion to reconsider the denial of a previous motion to reopen, and denying a motion to reopen. Our jurisdiction is governed by 8 U.S.C. § 1252. We review for abuse of discretion the denial of a motion to reconsider and the denial of a

* 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).

motion to reopen. *Mohammed v. Gonzales*, 400 F.3d 785, 791 (9th Cir. 2005).

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

The BIA did not abuse its discretion in denying the motion to reconsider because Carrillo failed to establish any error of fact or law in the BIA's September 14, 2020 determination that her motion to reopen was untimely. *See* 8 C.F.R. § 1003.2(b)(1); *Ma v. Ashcroft*, 361 F.3d 553, 558 (9th Cir. 2004) ("A petitioner's motion to reconsider must identify a legal or factual error in the BIA's prior decision."). We do not reach Carrillo's contentions as to prima facie eligibility for adjustment of status, as the BIA did not deny reconsideration on this ground. *See Santiago-Rodriguez v. Holder*, 657 F.3d 820, 829 (9th Cir. 2011) ("In reviewing the decision of the BIA, we consider only the grounds relied upon by that agency." (citation and internal quotation marks omitted)).

Construing Carrillo's submission of additional evidence as a motion to reopen, the BIA did not abuse its discretion in denying the motion to reopen as untimely and number barred, where it was filed more than nine years after the order of removal became final and was beyond the numerical limitations. *See* 8 U.S.C. § 1229a(c)(7); 8 C.F.R. § 1003.2(c)(2).

We generally lack jurisdiction to review the BIA's decision not to reopen proceedings sua sponte. *See Lona v. Barr*, 958 F.3d 1225, 1227 (9th Cir. 2020) (denial of sua sponte reopening is committed to agency discretion and unreviewable).

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

PETITION FOR REVIEW DENIED in part; DISMISSED in part.