

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JAN 16 2024

FOR THE NINTH CIRCUIT

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

RAMONA DOMINGO-CASTILLO,

Petitioner,

v.

MERRICK B. GARLAND, Attorney
General,

Respondent.

No. 23-299

Agency No.
A209-802-880

MEMORANDUM*

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

Submitted January 11, 2024**
Pasadena, California

Before: TALLMAN, CALLAHAN, and BENNETT, Circuit Judges.

Ramona Domingo-Castillo petitions for review of the Board of Immigration Appeals (BIA) order denying her motion to reopen based on alleged ineffective assistance of counsel. Exercising jurisdiction under 8 U.S.C. § 1252, we deny the

* 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).

petition. We review for abuse of discretion the BIA’s denial of a motion to reopen. *Singh v. Ashcroft*, 367 F.3d 1182, 1185 (9th Cir. 2004). We review de novo questions of law. *Id.*

An immigration judge (IJ) determined that Domingo-Castillo had abandoned any claims for relief from removal because she filed no applications for relief by the deadline set by the IJ.¹ Thus, the IJ ordered her removed. Represented by new counsel, Domingo-Castillo filed a notice of appeal with the BIA. The notice did not challenge the IJ’s abandonment determination but indicated that Domingo-Castillo intended to file a brief. Her attorney, however, never filed a brief, and so the BIA summarily dismissed her appeal. Domingo-Castillo then moved to reopen based on ineffective assistance of counsel by her attorney who appeared before the BIA.

Because her attorney failed to file a brief, Domingo-Castillo is entitled to a presumption of prejudice. *Singh*, 367 F.3d at 1189. But even when the presumption applies, to establish the requisite prejudice, the petitioner “must show that the BIA could plausibly have determined that [s]he was [eligible for relief] based on the record before it.” *Rojas-Garcia v. Ashcroft*, 339 F.3d 814, 827 (9th Cir. 2003); *see also Singh*, 367 F.3d at 1189. Nowhere—either before the BIA or

¹ Domingo-Castillo was represented by counsel before the IJ. She made no claim before the BIA that her counsel before the IJ was ineffective.

on appeal to us—does Domingo-Castillo argue or present evidence showing that she could have overcome the IJ’s abandonment determination, which was the basis for her removal. Thus, there were no plausible grounds for relief, and the BIA did not abuse its discretion in denying the motion to reopen.

PETITION DENIED.