

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

APR 5 2024

FOR THE NINTH CIRCUIT

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

NISIM HOHASHVILI,

Petitioner,

v.

MERRICK B. GARLAND, Attorney  
General,

Respondent.

Nos. 22-827, 23-216

Agency No.  
A057-576-393

MEMORANDUM\*

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

Submitted April 3, 2024\*\*  
Pasadena, California

Before: R. NELSON, VANDYKE, and SANCHEZ, Circuit Judges.

In consolidated appeals, Nisim Hohashvili, a citizen and native of Israel, appeals the Board of Immigration Appeals' (BIA) decisions (1) affirming the Immigration Judge's (IJ) denial of his petition to remove conditions of residency

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\* 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).

and (2) denying his motion to reopen. We have jurisdiction under 8 U.S.C. § 1252. We review due process challenges in immigration proceedings *de novo*, *Singh v. Gonzales*, 416 F.3d 1006, 1009 (9th Cir. 2005), and the BIA’s denial of a motion to reopen for abuse of discretion, *Tadevosyan v. Holder*, 743 F.3d 1250, 1252 (9th Cir. 2014). Where the BIA cites *Matter of Burbano*, 20 I. & N. Dec. 872 (BIA 1994), and does not express disagreement with any part of the IJ’s decision, the BIA adopts the IJ’s decision in its entirety. *See Kwong v. Holder*, 671 F.3d 872, 876 (9th Cir. 2011). For the following reasons, we deny both petitions.

1. In his first petition (Case No. 22-827), Hohashvili argues that he was denied due process when the IJ did not allow his ex-wife or former mother-in-law to testify telephonically after he failed to comply with the IJ’s witness procedures, and when the IJ *sua sponte* cut short his mother’s testimony.<sup>1</sup> We disagree. We will reverse the BIA’s decision on due process grounds only if (1) “the proceeding was so fundamentally unfair that the alien was prevented from reasonably presenting his case,” and (2) the applicant demonstrates “that the outcome of the proceeding may have been affected by the alleged violation.” *Colmenar v. INS*, 210 F.3d 967, 971 (9th Cir. 2000) (internal quotation marks and citations omitted).

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<sup>1</sup> Hohashvili’s opening brief does not meaningfully challenge the agency’s adverse credibility determination, its finding that Hohashvili failed to establish that he entered into the marriage in good faith, or the IJ’s denial of a further continuance. Accordingly, the arguments are waived. *See Hernandez v. Garland*, 47 F.4th 908, 916 (9th Cir. 2022) (as amended).

The IJ did not violate due process by not allowing Hohashvili's ex-wife or former mother-in-law to testify telephonically, or by affording less weight to their affidavits. Prior to his agency hearing, the IJ repeatedly informed Hohashvili that his ex-wife was required to testify in-person because she lived domestically, and that he was to provide international calling cards to reach his former mother-in-law in Israel. On the day of the hearing, Hohashvili informed the IJ that his ex-wife was not physically present and that he did not have the calling cards. Hohashvili was not deprived of a full and fair hearing where he was given ample notice and reasonable opportunity to present live testimony from the two witnesses in accordance with the IJ's requirements, and was allowed to submit affidavits in lieu of their live testimony.<sup>2</sup> *See Gu v. Gonzales*, 454 F.3d 1014, 1021 (9th Cir. 2006); *see also Gonzalez-Caraveo v. Sessions*, 882 F.3d 885, 890 (9th Cir. 2018) (explaining how an agency is "empowered to take various actions for docket management").

Hohashvili contends his due process rights were violated when the IJ cut short his mother's testimony. Even assuming the IJ erred in doing so, Hohashvili has not shown that he was prejudiced by any agency error. *Colmenar*, 210 F.3d at 971. In lieu of the live testimony, the IJ allowed Hohashvili's counsel to offer a

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<sup>2</sup> Because we find no due process violation, we do not reach the parties' arguments regarding prejudice.

proffer of his mother's testimony, which was accepted by both the government and the IJ. Hohashvili does not explain why the proffer of his mother's testimony, which was accorded full evidentiary weight by the IJ, resulted in prejudice.

2. In the second consolidated petition (Case No. 23-216), Hohashvili contends that the BIA erred in denying his motion to reopen based on ineffective assistance of counsel. To establish ineffective assistance of counsel in immigration proceedings, Hohashvili "must demonstrate that counsel's performance was so inadequate that it 'may have affected the outcome of the proceedings.'" *Maravilla Maravilla v. Ashcroft*, 381 F.3d 855, 858 (9th Cir. 2004) (quoting *Iturribarria v. INS*, 321 F.3d 889, 900 (9th Cir. 2003)). The BIA did not address whether counsel failed to perform with sufficient competence, focusing instead on the prejudice prong. We find no abuse of discretion in the BIA's determination that Hohashvili did not carry his burden to show that he was prejudiced by any deficient performance by counsel.

The IJ determined that Hohashvili did not sufficiently demonstrate a bona fide marriage based on three grounds: (1) insufficient evidence showing that Hohashvili and his ex-wife lived together, including no joint leases or utility statements, (2) insufficient evidence showing shared financial assets, and (3) admissions from Hohashvili that he had lied on his application for removal of residency conditions. As the BIA correctly determined, any allegedly defective

attorney action or inaction did not have any reasonable probability of impacting the IJ's finding because Hohashvili himself conceded all three grounds in his testimony before the IJ. Thus, even if Hohashvili's counsels' performance was ineffective, those actions would not have changed the primary grounds relied upon by the agency in rendering its decision. Although Hohashvili ties this claim to his earlier claim that the agency erred by barring live testimony from his ex-wife and former mother-in-law, he has failed to demonstrate prejudice. The testimony of these witnesses, as evidenced in their affidavits, was largely duplicative of Hohashvili's own testimony and would not have been able to cure the aforementioned deficiencies identified by the IJ in rendering its decision.

**PETITIONS DENIED.**