

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

AUG 21 2026

FOR THE NINTH CIRCUIT

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

ADJA SEYNABOU MBAYE,

Petitioner,

v.

TODD BLANCHE, Attorney General,

Respondent.

No. 24-3292

Agency No.
A213-207-992

MEMORANDUM*

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

Submitted August 13, 2026**
Reno, Nevada

Before: BADE, FORREST, and VANDYKE, Circuit Judges.

Petitioner Adja Syenabou Mbaye, a citizen of Senegal, petitions for review of the Board of Immigration Appeals' (BIA) decision denying her motion to reopen removal proceedings. We have jurisdiction under 8 U.S.C. § 1252, and we deny the petition.

* 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).

We review the BIA’s denial of a motion to reopen for an abuse of discretion, leaving it “undisturbed unless it is arbitrary, irrational, or contrary to law.” *Sarkar v. Garland*, 39 F.4th 611, 621 (9th Cir. 2022) (citation modified). A motion to reopen “shall not be granted unless . . . th[e] evidence sought to be offered is material and was not available and could not have been discovered or presented at the former hearing.” 8 C.F.R. § 1003.2(c)(1); *see* 8 U.S.C. § 1229a(c)(7)(B). The movant must also show *prima facie* eligibility for the relief sought—that is, “a reasonable likelihood” that she would establish eligibility for relief in reopened proceedings that considered the new evidence. *Fonseca-Fonseca v. Garland*, 76 F.4th 1176, 1179 (9th Cir. 2023). The factual findings underlying a denial of reopening are reviewed for substantial evidence and are “conclusive unless any reasonable adjudicator would be compelled to conclude to the contrary.” 8 U.S.C. § 1252(b)(4)(B); *Hernandez-Ortiz v. Garland*, 32 F.4th 794, 800 (9th Cir. 2022); *see also* *Urias-Orellana v. Bondi*, 607 U.S. 537, 543–44 (2026) (describing this “deferential” standard of review).

1. Underlying removal order. Much of Petitioner’s briefing challenges her underlying removal order from which she did not petition for review. The BIA’s initial order affirming the Immigration Judge’s (IJ) order of removal is separate from the BIA’s later order denying reopening, and each order requires its own timely petition for review. *See Stone v. INS*, 514 U.S. 386, 394–95 (1995), *abrogated on*

other grounds by *Riley v. Bondi*, 606 U.S. 259, 276–77 (2025). Because Petitioner did not timely seek review of the initial removal order and the Government has invoked the filing deadline, we may not revisit the merits of that decision, including the agency’s adverse credibility finding. *See Riley*, 606 U.S. at 276–77 (holding the 30-day deadline for petitioning for review is not jurisdictional but is a mandatory claims-processing rule); *Hamer v. Neighborhood Hous. Servs. of Chicago*, 583 U.S. 17, 20 (2017) (“If properly invoked, mandatory claim-processing rules must be enforced.”). We review only the BIA’s denial of Petitioner’s motion to reopen.

2. Motion to Reopen. Petitioner first argues her proceedings should be reopened due to changed country conditions. Her motion asserted that her father and uncle were “senior members” of PASTEF, Senegal’s principal opposition party until the February 2024 election, which led to her family being targeted. Her supporting evidence was her own written statement, an email from her uncle recounting his detention and escape, the uncle’s undated PASTEF membership card, and news articles about the 2023 crackdown on opposition protests.

The BIA may deny reopening where the evidence is too general to show that the movant’s “predicament is appreciably different from the dangers faced by her fellow citizens.” *Najmabadi v. Holder*, 597 F.3d 983, 990 (9th Cir. 2010) (citation omitted). Substantial evidence supports the BIA’s finding that Petitioner’s showing was “notably vague and generalized.” Petitioner did not provide relevant details for

most of the alleged incidents. The membership card is undated and reflects no leadership role. The description of her father and uncle as “senior members” appears only in counsel’s motion, and counsel’s unsupported statements are not evidence. *See INS v. Phinpathya*, 464 U.S. 183, 188 n.6 (1984). Petitioner’s own statement describes her father as a “hidden member” of PASTEF, and her asylum application affirmatively denied that any family member had ever been associated with a political party—a conflict her motion did not address.

Additionally, Petitioner’s evidence supplies no facts suggesting that Senegal’s government targeted the family as a family, or that it has any interest in Petitioner herself, who is not a PASTEF member, was not politically active, and was in the United States throughout the events she describes. On this record, the BIA could permissibly conclude that Petitioner had not shown a reasonable likelihood of establishing an individualized risk of persecution on account of a protected ground. *Cf. Sarkar*, 39 F.4th at 622–23; *Najmabadi*, 597 F.3d at 989–90.

Because Petitioner cannot show a well-founded fear of persecution sufficient to qualify for asylum, she necessarily cannot show the clear probability of future persecution required for withholding of removal. *Davila v. Barr*, 968 F.3d 1136, 1142 (9th Cir. 2020). And because her CAT claim rests on the same evidence, it fails for the same reason. *See Farah v. Ashcroft*, 348 F.3d 1153, 1157 (9th Cir. 2003).

Petitioner advanced two further theories in her motion to reopen. She argued that her Notice to Appear (NTA) was invalid because she had lawful F-1 student status when the NTA issued. As noted, reopening requires evidence that “was not available and could not have been discovered or presented at the former hearing.” 8 C.F.R. § 1003.2(c)(1). Substantial evidence supports the BIA’s finding that this theory rested on facts available throughout Petitioner’s proceedings.

Petitioner also challenged the IJ’s adverse credibility finding, which the BIA construed as a motion to reconsider and denied as time-barred. A motion to reconsider must be filed within 30 days of the original decision. 8 U.S.C. § 1229a(c)(6)(B). The BIA issued its initial decision affirming the adverse credibility finding on December 14, 2023; Petitioner moved to reopen on February 5, 2024—53 days later. Petitioner’s opening brief neither contests that calculation nor identifies any applicable exception.

For all these reasons, the BIA did not abuse its discretion in denying Petitioner’s motion to reopen.

3. *Sua sponte reopening.* Our review of the BIA’s refusal to reopen removal proceedings sua sponte is limited to “reviewing the reasoning behind the decision[] for legal or constitutional error.” *Bonilla v. Lynch*, 840 F.3d 575, 588 (9th Cir. 2016). Petitioner argues that the “mental suffering and depression” she experienced in detention amounted to an exceptional circumstance warranting reopening. She fails

to identify any legal or constitutional error in the BIA's reasoning and instead asks us to reweigh the equities. We lack jurisdiction to review this challenge. *See id.* at 588.

PETITION DENIED in part; DISMISSED in part.