

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

SEP 18 2026

FOR THE NINTH CIRCUIT

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

JOSE GUADALUPE RIVERA-
CABALLERO,

Petitioner,

v.

TODD BLANCHE, Attorney General,

Respondent.

No. 20-73728

Agency No. A205-416-856

MEMORANDUM*

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

Submitted September 16, 2026**
Phoenix, Arizona

Before: M. SMITH and TUNG, Circuit Judges, and DIMKE,*** District Judge.

Jose Guadalupe Rivera-Caballero, a native and citizen of Mexico, petitions
for review of a decision of the Board of Immigration Appeals (“BIA”) denying his

* 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).

*** The Honorable Mary K. Dimke, United States District Judge for the
Eastern District of Washington, sitting by designation.

motion to reopen removal proceedings to seek cancellation of removal. Rivera-Caballero specifically challenges (1) the immigration court’s subject matter jurisdiction despite deficiencies in his Notice to Appear (“NTA”), and (2) the BIA’s denial of his motion to reopen in light of changed circumstances that he alleges justified cancellation of removal. We have jurisdiction under 8 U.S.C. § 1252. We deny the petition.

The parties are familiar with the facts, so we do not recount them here except where necessary for context. We review the BIA’s denial of a motion to reopen for abuse of discretion. *Fonseca-Fonseca v. Garland*, 76 F.4th 1176, 1180 (9th Cir. 2023). The BIA abuses its discretion when its decision is arbitrary, irrational, or contrary to law. *Bonilla v. Lynch*, 840 F.3d 575, 581 (9th Cir. 2016). We review the BIA’s “exceptional and extremely unusual hardship” determination—a mixed question of law that is “primarily factual”—for substantial evidence, *Gonzalez-Juarez v. Bondi*, 137 F.4th 996, 1003, 1005 (9th Cir. 2025).

1. The immigration court was not deprived of subject matter jurisdiction over Rivera-Caballero’s removal proceedings. Rivera-Caballero argues that the immigration court lacked subject matter jurisdiction because his NTA did not include the date and time of his initial hearing. We have held, however, that an NTA’s failure to include date and time information does not deprive the immigration court of subject matter jurisdiction. *United States v. Bastide-*

Hernandez, 39 F.4th 1187, 1188 (9th Cir. 2022) (en banc). Rivera-Caballero’s reliance on *Niz-Chavez v. Garland*, 593 U.S. 155 (2021), is misplaced because *Niz-Chavez* addressed the stop-time rule, not whether a deficient NTA deprives the immigration court of jurisdiction. *See Bastide-Hernandez*, 39 F.4th at 1193 & n.9.

2. The BIA did not abuse its discretion in denying Rivera-Caballero’s motion to reopen. To obtain reopening, Rivera-Caballero was required to present material evidence that was previously unavailable and establish prima facie eligibility for the relief sought.¹ *See* 8 C.F.R. § 1003.2(c)(1); *Fonseca-Fonseca*, 76 F.4th at 1179. For cancellation of removal, he was required to show a reasonable likelihood that his removal would result in “exceptional and extremely unusual hardship” to a qualifying relative. 8 U.S.C. § 1229b(b)(1)(D); *Fonseca-Fonseca*, 76 F.4th at 1179. This standard “requires hardship that deviates, *in the extreme*, from the hardship that ordinarily occurs in removal cases.” *Gonzalez-Juarez*, 137 F.4th at 1007 (emphasis added). As relevant here, Rivera-Caballero was required

¹ The BIA stated that Rivera-Caballero had not shown that the new evidence “would likely alter the outcome” of reopened proceedings. After the BIA’s decision, we clarified that the prima facie eligibility inquiry requires only a “reasonable likelihood” that the statutory requirements for relief are satisfied. *Fonseca-Fonseca*, 76 F.4th at 1179. Rivera-Caballero did not raise this issue in his opening brief and, although he was given the opportunity to do so, he did not file a supplemental brief after this case was reopened. He therefore forfeited any challenge to the BIA’s articulation of the prima facie eligibility standard. *See Greenwood v. Fed. Aviation Admin.*, 28 F.3d 971, 977 (9th Cir. 1994). Regardless, as explained below, the BIA’s denial withstands review under the correct reasonable likelihood standard.

to demonstrate hardship “substantially beyond the ordinary hardship that would be expected when a close family member leaves this country.” *Matter of Monreal-Aguinaga*, 23 I. & N. Dec. 56, 62 (BIA 2001); *see also Martinez-Hernandez v. Holder*, 778 F.3d 1086, 1089 (9th Cir. 2015). He did not.

The BIA, applying this stringent standard, considered the evidence Rivera-Caballero submitted with his motion to reopen, including evidence that his children suffered from anxiety and depression, that two children experienced suicidal ideation, and that his daughter had asthma and educational needs. The BIA found that the evidence Rivera-Caballero submitted about his daughter’s asthma and educational issues was similar to evidence previously presented to the Immigration Judge. The BIA reasonably concluded that the new evidence, considered together with the existing record, did not establish *prima facie* eligibility for cancellation of removal.

Substantial evidence supports the BIA’s determination that Rivera-Caballero failed to show a reasonable likelihood of exceptional and extremely unusual hardship. The BIA acknowledged that Rivera-Caballero’s removal would cause his family a high degree of emotional hardship, “even rising to the level of medical significance.” But the BIA permissibly relied on the absence of evidence that the children’s medical and mental health needs could not be treated in Mexico, and the absence of evidence that Rivera-Caballero’s daughter would be unable to continue

receiving treatment if she remained in the United States. *See Matter of J-J-G-*, 27 I. & N. Dec. 808, 811-12 (BIA 2020). The BIA reached the reasonable conclusion that these evidentiary deficiencies undercut the extremity of the hardship facing Rivera-Caballero. On this record, the BIA’s conclusion, that that Rivera-Caballero did not establish a reasonable likelihood that his qualifying relatives would suffer exceptional and extremely unusual hardship, was supported by substantial evidence.

3. Rivera-Caballero also contends that the BIA failed to consider the evidence cumulatively. The record shows otherwise. The BIA expressly stated that it considered the new evidence “along with the evidence already in the record” and concluded that, “even considered cumulatively,” the documents did not warrant reopening. The BIA was not required to discuss every piece of evidence in the record individually. *See Najmabadi v. Holder*, 597 F.3d 983, 990 (9th Cir. 2010).

The motion for a stay of removal, Dkt. 33, is denied.

PETITION DENIED.