NOT FOR PUBLICATION

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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

SUSANA TERESA AQUINO; W. S. M.-A.; V. M.-A.; M. A. O.-A., Petitioners, v. TODD BLANCHE, Attorney General, Respondent.	No. 25-5731 Agency Nos. A220-457-398 A220-457-397 A220-457-484 A220-457-482 MEMORANDUM[*]

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

Submitted October 23, 2026[**]
Pasadena, California

Before: BUMATAY, VANDYKE, and MENDOZA, JR., Circuit Judges.

Petitioner Susana Teresa Aquino and her three children[1] petition for review of the Board of Immigration Appeals' ("BIA") dismissal of their appeal from the decision of an Immigration Judge ("IJ") denying their claims for asylum,

[*] 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).

[1] Aquino's children applied for asylum as derivative beneficiaries of her claim and did not file separate applications for relief. *See* 8 U.S.C. § 1158(b)(3)(A).

withholding of removal, and protection under the Convention Against Torture ("CAT"). We have jurisdiction under 8 U.S.C. § 1252, and we deny the petition.

We review claims of due process violations in immigration proceedings de novo. *Simeonov v. Ashcroft*, 371 F.3d 532, 535 (9th Cir. 2004). To prevail, Petitioners bear the burden of proving that (1) the agency erred and (2) the alleged error prejudiced them. *See Grigoryan v. Barr*, 959 F.3d 1233, 1240 (9th Cir. 2020); *Gutierrez v. Holder*, 662 F.3d 1083, 1091 (9th Cir. 2011). Prejudice exists only where the violation may have affected the outcome of the proceedings. *See Flores-Rodriguez v. Garland*, 8 F.4th 1108, 1113 (9th Cir. 2021).

Petitioners argue that the IJ committed on the record to sever the children's cases from Aquino's case, and that the BIA erred by affirming a decision that omitted an allegedly "material procedural step." But the entire premise of Petitioners' argument is a single, isolated remark the IJ made while discussing the necessity of testimony from Aquino's eldest son: "[I]f the case is denied then, I'm severing anyway … I just don't see it as a big deal." This was not a procedural ruling but an offhand, unelaborated comment, immediately followed by silence on the subject for the remainder of the hearing.

Second, even if the IJ's offhand statement could be construed as a procedural ruling, Petitioners would still fail to show prejudice in the continued consolidation of their proceedings. Petitioners did not move for a continuance or to

administratively close proceedings. *Cf. C.J.L.G. v. Barr*, 923 F.3d 622, 628 (9th Cir. 2019) (en banc) (remanding so that the IJ could consider granting a continuance where a child is "actively pursuing" SIJ status); *In re Zepeda-Padilla*, 2018 WL 187722, at *1–2 (B.I.A. Feb. 16, 2018) (remanding the case to IJ where applicant had requested a continuance to pursue a pending guardianship petition in state family court). Nor did they move for reconsideration after the IJ issued a decision that *did not* mention severance, or explained to the BIA why the lack of severance caused them any prejudice. Indeed, the record suggests that they did not suffer prejudice. The IJ's failure to timely issue a decision, the BIA's first remand, and the IJ's eventual decision gave Petitioners more time to pursue SIJ relief, not less. The children remained without a final order of removal for roughly two additional years until the IJ's decision was properly issued in 2024.

Moreover, the continued consolidation of the children's cases with Aquino's did not affect the outcome of the proceedings. *See Florez-Rodriguez*, 8 F.4th at 1113. Petitioners assert that DHS "was actively considering dismissal of this case" had the children's cases been severed, but they fail to substantiate that claim with any evidence in the record. And in any event, the children remained free to pursue adjustment of status to lawful permanent residents through a motion to reopen

regardless of whether their cases were severed.[2] *See* 8 C.F.R. §§ 204.11 & 245.1(e). Further, because parents of a child with SIJ classification "will not be accorded any right, privilege, or status under the Act by virtue of their parentage," the outcome of the proceeding would not have changed for Aquino. *Id.* § 245.1(e)(vi); *accord* 8 U.S.C. § 1101(a)(27)(J)(iii)(II). Accordingly, the lack of severance did not prejudice Petitioners, and the BIA did not err in dismissing the appeal.[3]

PETITION DENIED.[4]

[2] Granted, obtaining relief is now harder. *See C.J.L.G.*, 923 F.3d at 629. Because the removal order was entered, even if the children obtain SIJ status, they cannot apply for relief unless the IJ reopens removal proceedings and vacates the removal order. *Id.* "The IJ has discretion both in deciding whether to open removal proceedings … and in whether to grant a subsequent adjustment application." *Id.* at 626.

[3] The BIA concluded that Petitioners waived any challenge to the IJ's denial of asylum, withholding of removal, and CAT relief. And Petitioners' opening brief does not challenge that conclusion by the BIA. Accordingly, we do not address any such challenge here. Fed. R. App. P. 28(a)(8)(A); *Greenwood v. FAA*, 28 F.3d 971, 977 (9th Cir. 1994); *Umana-Escobar v. Garland*, 69 F.4th 544, 550 (9th Cir. 2023); 8 U.S.C. § 1252(d)(1).

[4] The motion to stay removal (Dkt. 2) is denied.