NOT FOR PUBLICATION

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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FRANCISCO MARTINEZ ORTIZ, Petitioner, v. TODD BLANCHE, Attorney General, Respondent.	No. 22-1170 Agency No. A087-902-055 MEMORANDUM[*]

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

Submitted October 22, 2026[**]
San Francisco, California

Before: FORREST and TUNG, Circuit Judges, and COLLINS, District Judge.[***]

Petitioner Francisco Javier Martinez Ortiz, a citizen of Mexico, petitions for review of the Board of Immigration Appeals' (BIA) decision denying his motion to

[*] 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 Raner C. Collins, United States District Judge for the District of Arizona, sitting by designation.

reopen removal proceedings. We have jurisdiction under 8 U.S.C. § 1252, and we deny the petition.

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) (internal quotation marks and citation omitted).

1. ***Jurisdiction.*** We generally cannot review "any judgment regarding the granting of relief" under 8 U.S.C. § 1229b(b), 8 U.S.C. § 1252(a)(2)(B)(i), but there is an exception for "constitutional claims or questions of law," *id.* § 1252(a)(2)(D). "A ruling by the BIA that the facts do not meet the legal requirements of a particular procedural statute or regulation is a 'question of law'" that we may review. *Lemus-Escobar v. Bondi*, 158 F.4th 944, 963 (9th Cir. 2025) (quoting *Wilkinson v. Garland*, 601 U.S. 209, 225 (2024)) (internal quotation omitted).

Martinez Ortiz advanced a colorable legal challenge concerning whether the BIA applied the correct burden of proof in assessing his evidence, and thus we have jurisdiction to consider his petition.

2. ***Motion to Reopen Standard.*** Martinez Ortiz sought to reopen his removal proceedings based on new, previously unavailable evidence. To succeed, the petitioner must present evidence that "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); *Najmabadi v. Holder*, 597 F.3d 983, 986 (9th Cir. 2010). But even if new evidence is presented, reopening may be denied if the petitioner fails to "establish a prima facie case for the relief sought." *Najmabadi*, 597 F.3d at 986.

The BIA denied Martinez Ortiz's motion. It explained that the "new evidence relating to [his] son itself does not establish a prima facie case for exceptional and extremely unusual hardship." It also explained that the evidence was "insufficient to demonstrate that the decision in this case would likely change if reopening is granted." The would-likely-change-the-result standard does not govern the prima facie inquiry. As we clarified in *Fonseca-Fonseca*, that standard applies only to decisions made on discretionary grounds and the lower reasonable-likelihood-of-success standard that Martinez Ortiz presses applies when assessing whether a petitioner has established prima facie eligibility for relief. 76 F.4th 1176, 1181–82 (9th Cir. 2023). But assuming that the BIA applied the wrong standard, this error was harmless "unless there is a showing of prejudice to the petitioner." *Zamorano v. Garland*, 2 F.4th 1213, 1228 (9th Cir. 2021) (internal quotation marks and citation omitted).

Here, there is no showing of prejudice. Applying a higher evidentiary standard than the law requires in denying a motion to reopen can be prejudicial to the petitioner, but the BIA determined that Martinez Ortiz was not entitled to reopening even under the correct reasonable-likelihood standard. After discussing

the record evidence, the BIA concluded that Martinez Ortiz "has not established that a particular change has occurred that would cause his son hardship, to now be considered 'exceptional and extremely unusual.'" This definitive statement is not couched in the "would likely change" framing. For that reason, we decline to remand for the agency to apply the correct standard because it has already expressed its judgment on the material issue. *See Orlando Ventura*, 537 U.S. at 16 (explaining that remand is proper when the agency has not "reached its own conclusions"); *Singh v. Barr*, 935 F.3d 822, 827 (9th Cir. 2019) (holding that "we need not remand" because "neither the result nor the BIA's basic reasoning would change" upon applying the correct standard).

3. ***Cancellation of Removal.*** To obtain cancellation of removal, the petitioner must "establish[] that removal would result in exceptional and extremely unusual hardship" to a qualifying relative. 8 U.S.C. § 1229b(b)(1)(D). For a hardship to meet this standard, it must be "out of the ordinary and exceedingly uncommon, and must deviate, in the extreme, from the norm." *Gonzalez-Juarez v. Bondi*, 137 F.4th 996, 997 (9th Cir. 2025). The BIA "must consider a range of factors, including the age and health of the qualifying family member" and weigh the factors "in the aggregate." *Wilkinson*, 601 U.S. at 215 (internal quotations removed).

In support of his motion to reopen, Martinez Ortiz submitted an evaluation from a marriage and family therapist regarding his son's mental health struggles, his

son's Individualized Education Program set up by his school, and a declaration from his son and himself. Martinez Ortiz also reiterated that his daughter had made two suicide attempts. The BIA properly considered and weighed the evidence, and its conclusion that Martinez Ortiz failed to demonstrate a change that established a qualifying hardship is not "arbitrary, irrational, or contrary to law." *Sarkar*, 39 F.4th at 621.

PETITION DENIED.[1]

[1]The temporary stay ordered in this case (Dkt. 9) is terminated.