NOT FOR PUBLICATION

FILED

NOV 3 2026

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

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

PELISI FOKETI FONUA, Petitioner, v. TODD BLANCHE, Attorney General, Respondent.	No. 25-5543 Agency No. A091-854-049 MEMORANDUM[*]

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

Submitted October 27, 2026[**]

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

Pelisi Foketi Fonua, a native and citizen of Tonga, petitions pro se for review of the Board of Immigration Appeals' ("BIA") order denying his motion to reopen removal proceedings to apply for withholding of removal, protection under the Convention Against Torture ("CAT"), and cancellation of removal. We have

[*] 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).

jurisdiction under 8 U.S.C. § 1252. We review for abuse of discretion the denial of a motion to reopen and review de novo constitutional claims. *Mohammed v. Gonzales*, 400 F.3d 785, 791-92 (9th Cir. 2005). We deny the petition for review.

The BIA did not abuse its discretion in denying Fonua's second motion to reopen as number-barred and untimely, where Fonua did not show changed country conditions in Tonga necessary to apply for withholding of removal and CAT protection. *See* 8 U.S.C. § 1229a(c)(7)(A) (only one motion to reopen allowed), (c)(7)(C)(i) (motion to reopen must be filed within ninety days of the final removal order), (c)(7)(C)(ii) (a motion to reopen to apply for withholding of deportation must be based on changed circumstances arising in the country of nationality, if such evidence is material); *Toufighi v. Mukasey*, 538 F.3d 988, 996-97 (9th Cir. 2008) (movant must produce material evidence that conditions in country of nationality had changed). In light of this disposition, we need not reach Fonua's contentions regarding prima facie eligibility for withholding of removal and CAT protection. *See Simeonov v. Ashcroft*, 371 F.3d 532, 538 (9th Cir. 2004) (courts and agencies are not required to decide issues unnecessary to the results they reach).

The BIA also did not abuse its discretion in denying the motion to reopen to apply for cancellation of removal where Fonua did not address the immigration judge's dispositive finding that he was ineligible for relief based on his conviction.

See Ramirez-Munoz v. Lynch, 816 F.3d 1226, 1228 (9th Cir. 2016) (BIA may deny a motion to reopen for failure to establish prima facie eligibility for the relief sought).

We reject as unsupported by the record Fonua's contention that the BIA failed to consider material evidence in denying the motion to reopen.

Fonua's claim that the BIA violated due process by applying an incorrect legal standard for showing prima facie eligibility fails for lack of prejudice. *See Colmenar v. INS*, 210 F.3d 967, 971 (9th Cir. 2000) ("[P]rejudice . . . means that the outcome of the proceeding may have been affected by the alleged violation.").

Fonua does not challenge the BIA's determination that he failed to establish ineffective assistance of prior counsel, so we do not address it. *See Lopez-Vasquez v. Holder*, 706 F.3d 1072, 1079-80 (9th Cir. 2013).

To the extent Fonua challenges his removability, this claim is not properly before the court because he did not raise it before the BIA in the motion to reopen. *See* 8 U.S.C. § 1252(d)(1) (administrative remedies must be exhausted); *see also Suate-Orellana v. Garland*, 101 F.4th 624, 629 (9th Cir. 2024) (the exhaustion requirement is not jurisdictional, but must be enforced if properly raised by a party).

PETITION FOR REVIEW DENIED.