UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 26-1095

Keidy Dallana Posada-Arriola;
M. W. M.-P.;
L. C. M.-P.;
B. M. M.-P.,
Petitioners

v.

Attorney General United States of America

On Petition for Review of an Order of the BIA
Immigration Judge Maria I. Akalski, Nos. A220-293-038, A220-293-035, A220-293-036 & A220-293-037

Before: HARDIMAN, MCKEE, AND AMBRO, *Circuit Judges*
Submitted: Nov. 20, 2026; Filed: Nov. 23, 2026

NONPRECEDENTIAL OPINION*

AMBRO, *Circuit Judge*

Keidy Dallana Posada-Arriola, on behalf of her herself and her three minor children ("Petitioners"), petitions for review of the Board of Immigration Appeals' ("BIA") denial of her motion to reopen removal proceedings. Because the BIA's decision to exercise its *sua sponte* reopening authority is generally unreviewable and Posada has failed to identify

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* This is not an opinion of the full Court and, under 3d Cir. IOP 5.7, is not binding precedent.

an applicable exception, and because her due-process argument fails, we dismiss the petition in part and deny it in part.

I. BACKGROUND

Proceeding *pro se* in removal proceedings, Petitioners requested asylum, withholding of removal, and protection under the Convention Against Torture (CAT). While living in Honduras, Posada began having problems with a neighbor who threatened her because he believed he owned the house where she resided. When Posada fled to her mother's house, she was threatened by members of the 18th Street Gang, who told her she could not remain there because she was coming from a zone that did not belong to them. Posada also testified that her brother-in-law had caused her to miscarry by hitting her.

The immigration judge (IJ) denied all forms of relief, concluding that Petitioners had not experienced persecution based on any of the statutory grounds, as is required for asylum and withholding of removal.[1] The IJ also denied CAT protection, as she could not conclude they were likely to be tortured if returned to Honduras. The BIA affirmed the IJ's decision in July 2024, and Petitioners did not seek review.

Through counsel in August 2025, they moved the BIA to reopen and terminate removal proceedings, asserting that their pending T-visa applications constituted a

[1] To be eligible for asylum and withholding of removal, a noncitizen must show a well-founded fear of persecution on account of one of five protected grounds: race, religion, nationality, membership in a particular social group, or political opinion. 8 U.S.C. § 1101(a)(42).

material change in circumstances. A T-visa provides relief for certain victims of severe trafficking. 8 U.S.C. § 1101(a)(15)(T); 8 C.F.R. § 214.202. Petitioners claimed that new evidence, as documented in Posada's sworn statement to support the T-visa application, established that she and her children were victims of trafficking, abuse, and coercion.

Posada also included an affidavit in support of the motion, documenting the repeated physical, emotional, and sexual abuse she suffered in Honduras from her former partner, various family members, their partners, and the individuals who helped her enter the United States. She was "unable to bring [herself] to discuss" these issues in her IJ hearing. AR 156. Posada also attached a letter from her therapist diagnosing her with PTSD. Lastly, she included an I-589 application for asylum, withholding of removal, and CAT protection based on the abuse. Regarding the I-589, the motion to reopen argued that "[t]he asylum application provides further evidence of the harm [Petitioners] have suffered and underscores their eligibility for protection under U.S. immigration law." AR 134.

In December 2025, the BIA denied the motion to reopen. The BIA began by explaining that the motion was untimely because it was filed more than 90 days after the final order of removal. Although the BIA has discretion to reopen a case *sua sponte* after the deadline, it does so only in "exceptional situations." *Matter of G-D-*, 22 I&N Dec. 1132, 1133–34 (B.I.A. 1999). It did not find an "exceptional situation" here because "respondents may continue to pursue their T-visa applications before USCIS [U.S. Citizenship and Immigration Services] independently of these proceedings," and because

"the adjudication of T-visa is a matter within the exclusive jurisdiction of USCIS." AR 3. The BIA did not address the new asylum application.

Petitioners timely appealed and argue the BIA erred by basing its decision on an "incorrect legal premise," failing to explain adequately why an "exceptional situation" did not exist, and failing to address Petitioners' eligibility for asylum, withholding of removal, and CAT protection. These claimed errors also purportedly violated their Fifth Amendment due-process rights to a meaningful hearing.

II. JURISDICTION & STANDARD OF REVIEW

A noncitizen has 90 days to file a motion to reopen from the date on which the agency rendered the final administrative decision. 8 U.S.C. § 1229a(c)(7)(A), (C)(i); 8 C.F.R. § 1003.2(c)(2). If the noncitizen fails to do so, she may request that the agency reopen her case *sua sponte*.[2] 8 C.F.R. § 1003.2(a) ("The Board may at any time reopen or reconsider on its own motion any case in which it has rendered a decision."). We generally lack jurisdiction to review denials of *sua sponte* reopening, but we have carved out exceptions where the agency's decision relies on an "incorrect legal premise" or when the agency arbitrarily departs from its "settled course of adjudication" in declining to reopen *sua sponte*. *See Park v. Att'y Gen.*, 846 F.3d 645, 651 (3d Cir. 2017).

[2] Petitioners do not contend their motion was timely or the 90-day deadline should be equitably tolled.

III. ANALYSIS

A. The BIA's denial was not based on an "incorrect legal premise."

Petitioners argue the BIA's denial relied on an "incorrect legal premise." We disagree. The BIA correctly explained that Petitioners could continue to pursue their T-visa applications before the USCIS independent of immigration proceedings. *See* 8 C.F.R. § 214.204(b)(2) (providing that an applicant subject to a final order of removal may file an application for a T-visa with the USCIS, and that it has the exclusive authority to adjudicate that application). This reasoning reflects BIA precedent explaining that *sua sponte* reopening is intended for "truly exceptional situations," *G-D-*, 22 I&N Dec. at 1133–34, not as "a general cure for filing defects or to otherwise circumvent the regulations, where enforcing them might result in hardship," *Matter of J-J-*, 21 I&N Dec. 976, 984 (BIA 1997). Petitioners' reliance on *Pllumi v. Attorney General of the United States*, 642 F.3d 155 (3d Cir. 2011), is misplaced. In that case, the "false legal premise" was the BIA's conclusion that it had no power to reopen immigration proceedings based on the adequacy of healthcare in the country of removal. *Id.* at 161–62. We remanded because the BIA had misunderstood its authority. *Id.* at 162–63.[3] We find no such legal error here and therefore lack jurisdiction.

[3] Petitioners' claim that the BIA should have addressed the humanitarian factors presented in the asylum application, affidavit, and therapist letter similarly fails because no mistaken legal premise underlies the omission.

B. We have no jurisdiction to review whether the BIA provided an adequate basis for its decision to deny reopening.

Petitioners also argue the BIA abused its discretion by failing to explain adequately why it found no exceptional situation. But we may not review the BIA's denial unless it relied on an "incorrect legal premise" or strayed from a "settled course of adjudication." *See Park*, 846 F.3d at 651. Neither exception exists here.[4] Petitioners' invocation of *Valarezo-Tirado v. Attorney General of the United States*, 21 F.4th 256 (3d Cir. 2021), and *Matter of M-P-*, 20 I&N Dec. 786 (B.I.A. 1994), do not save their argument. Although the agency's failure to provide reasoned explanations for its decisions resulted in remand, neither case involved the BIA's *sua sponte* reopening authority. *See Valarezo-Tirado*, 21 F.4th at 260–64 (petition for review of a CAT denial); *M-P-*, I&N Dec. at 786–87 (BIA review of IJ's denial of a motion to reopen). The decisions were not "functionally unreviewable" rulings, *Park*, 846 F.3d at 651, over which the adjudicator exercised "unfettered discretion," *Pllumi*, 642 F.3d at 159. Accordingly, Petitioners fail to show we can exercise jurisdiction over their claim.

C. The BIA did not err in declining to address Petitioners' asylum, withholding of removal, and CAT claims.

Petitioners argue the BIA erred by failing to address their eligibility for asylum, withholding of removal, and CAT protection based on the I-589 they attached to the motion to reopen. "[I]f the basis of the motion is to apply for [asylum] or [withholding of

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[4] Nowhere do Petitioners assert the denial was contrary to the BIA's "settled course of adjudication."

removal] and is based on changed country conditions arising in the country of nationality or the country to which removal has been ordered," the 90-day time limit does not apply. 8 U.S.C. § 1229a(c)(7)(C)(ii). But Petitioners did not ask for the BIA to reopen proceedings so they could reapply for protection based on changed country conditions in Honduras—indeed, the new materials fail to assert changed country conditions at all. Petitioners relied solely on the T-visas to show a material change in circumstances. They referenced the asylum application only as "further evidence of the harm they have suffered and underscore[d] their eligibility for protection." AR 25. The BIA thus did not rely on an "incorrect legal premise" by declining to address the new application for protection.

D. The BIA did not violate Petitioners' due-process rights.

As a last attempt to invoke our jurisdiction, Petitioners argue the alleged errors cumulatively violated their due-process rights by depriving them of "a meaningful opportunity to be heard" and "a reasonable opportunity to present evidence." Pet. Br. 19 (quoting *Jarbough v. Att'y Gen.*, 483 F.3d 184, 190, 192 (3d Cir. 2007)). Though the reopening decision is discretionary, we retain jurisdiction to review constitutional due-process claims. *Darby v. Att'y Gen.*, 1 F.4th 151, 165 (3d Cir. 2021). Petitioners, however, must identify a liberty or property interest. *Id.* We have recognized that a motion to reopen *sua sponte* does not create any such interest because it "is essentially a request that the BIA waive its procedural requirements and exercise its discretionary authority to reopen removal proceedings." *Id.* at 166. In this context, their due-process claim fails.

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We thus deny in part and dismiss in part the petition for review.