

NONPRECEDENTIAL DISPOSITION

To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals

For the Seventh Circuit

Chicago, Illinois 60604

Argued May 13, 2025

Decided December 19, 2025

Before

MICHAEL B. BRENNAN, *Chief Judge*

FRANK H. EASTERBROOK, *Circuit Judge*

DORIS L. PRYOR, *Circuit Judge*

No. 24-1333

ALBA LETICIA CASTILLO-DE
MOLINA, OSCAR ARMANDO
MOLINA-CASTILLO, and JONATHAN
ODIR MOLINA-CASTILLO,
Petitioners,

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

No. A201-458-120

No. A201-458-121

No. A201-458-122

v.

PAMELA J. BONDI,
Attorney General of the United States,
Respondent.

ORDER

Petitioner Alba Castillo-De Molina has filed a petition seeking review of the Board of Immigration Appeals' ("Board") decision to summarily dismiss her appeal and subsequent ruling denying her motion to remand. For the following reasons, we deny the petition for review.

I. BACKGROUND

Castillo-De Molina entered the United States near Roma, Texas, from El Salvador with her two children¹ on November 2, 2018. The next day, the Department of Homeland Security initiated removal proceedings against Castillo-De Molina by filing a Notice to Appear. In that notice, DHS charged Castillo-De Molina with removability pursuant to § 212(a)(6)(A)(i) of the Immigration and Nationality Act. Castillo-De Molina retained Carlos Quichiz as counsel.

At her master calendar hearing on May 13, 2019, Castillo-De Molina conceded her removability and sought relief by applying for asylum, withholding of removal, and protection under the Convention Against Torture. Counsel represented to the immigration judge that he would also file a brief in support of Castillo-De Molina's application within 30 days. Next, the IJ ensured that Quichiz had been served with DHS's instructions for complying with its biometrics requirements. The instruction sheet included the following warning:

Important: Failure to complete these actions and to follow any additional instructions that the Immigration Judge has given you could result in delay in deciding your application or in your application being deemed abandoned and dismissed by the court.

Concluding the hearing, the IJ requested that Quichiz file the supporting brief and that he ensure that Castillo-De Molina complied with the biometrics instructions. The individual merits hearing was set for December 19, 2019.

On November 22, 2019, Quichiz filed a motion to continue the merits hearing noting that he had trouble securing documentation from the government clinic where Castillo-De Molina had worked in El Salvador. Finding a lack of good cause for the requested continuance, the request was denied on December 13, 2019. Quichiz then mailed Castillo-De Molina's biometric information to a United States Citizenship and Immigration Services service center. The following day, Quichiz filed a brief to support Castillo-De Molina's application for relief on December 18, 2019.

¹ Alba Castillo-De Molina (referred to herein as "petitioner") is the lead applicant for relief and her children are derivative applicants who rely on her application. *See* 8 U.S.C. § 1158(b)(3) and 8 C.F.R. § 1208.3(a).

The immigration judge held the hearing on Castillo-De Molina's application the next day—December 19, 2019. At the beginning of the hearing, the IJ noted that it had received and reviewed the recently filed supporting documentation for Castillo-De Molina's application and that the court was ready to proceed. In response, the government, relying on 8 C.F.R. § 1208.10, requested that the IJ consider Castillo-De Molina's application abandoned because she had failed to meet the biometric requirements, and this had to be completed before the IJ could consider her asylum application.

The IJ then questioned Castillo-De Molina's counsel for the date the biometrics were sent. Quichiz represented that he had submitted Castillo-De Molina's biometric information about four weeks earlier. Though the court lacked the necessary biometrics, the IJ decided to proceed with the merits and hear testimony from the petitioner concerning her asylum, withholding of removal, and CAT protection claims. Castillo-De Molina testified that she had worked as a nurse in government clinics in El Salvador. While working there, Castillo-De Molina had been pursued by gang members to provide medical care and prescription medications on separate occasions. Out of fear of harm from the gang members, Castillo-De Molina provided the services when demanded but reported these incidents to her employer. Fearing retaliation, Castillo-De Molina's clinic supervisor indicated that there was nothing that could be done about the gangs. When questioned about whether she had also reported these incidents to the police, Castillo-De Molina testified that she had not because there was nothing the police would do. At the conclusion of the hearing, the IJ indicated that it would issue a written decision and directed Quichiz to file Castillo-De Molina's biometrics information with the court when it came in.

On November 11, 2020, the IJ issued its decision denying Castillo-De Molina's request for asylum, withholding of removal, and protection from removal under the Convention Against Torture. Finding Castillo-De Molina had failed to demonstrate good cause for not timely complying with the biometrics requirement as outlined in 8 C.F.R. § 1003.47(c); 8 C.F.R. § 1208.10, the IJ dismissed Castillo-De Molina's application. Alternatively, the IJ also ruled that her application for relief would have failed on the merits because (1) Castillo-De Molina failed to show past persecution or a well-founded fear of future persecution, (2) she had not shown a substantial risk of torture if she returned to El Salvador, and (3) she had failed to demonstrate that a pattern or practice

of persecution against her proposed particular social group (nurses who refused to cooperate with gangs). The IJ ordered Castillo-De Molina removed to El Salvador.²

Castillo-De Molina filed a notice of appeal to the Board of Immigration Appeals through her new counsel on December 16, 2020.³ Within the notice, Castillo-De Molina also indicated that she would be filing a separate written brief or statement after receiving the Board's briefing schedule from the IJ. In a supplement attached to the notice, she argued that the IJ erred in (1) denying her motion to continue; (2) dismissing her application for asylum, withholding of removal and protection under the CAT for failure to comply with the biometrics requirement; and (3) for denying her request for relief on the merits. Castillo-De Molina also reserved the right to argue ineffective assistance of counsel.

Next, the Board issued a briefing schedule and further warned Castillo-De Molina that failing to file a brief within the time specified could result in a summary dismissal.⁴ Castillo-De Molina requested an extension of time to file her brief, and the Board granted it with Castillo-De Molina's brief being due on June 8, 2022. The Board again in the notice granting the extension warned Castillo-De Molina that failing to file a brief could result in summary dismissal.

² The IJ explained its reasoning for denying Castillo-De Molina's earlier motion to continue. Castillo-De Molina had requested a continuance to gather additional documentation to support her testimony that she served as a nurse in El Salvador. The IJ explained that because Castillo-De Molina had not demonstrated that she had been making "diligent efforts" to collect these documents over the last seven months, her request was denied. The IJ also noted that the documents would have been cumulative of Castillo-De Molina's testimony because she had been permitted to testify about her role as a nurse.

³ Castillo-De Molina retained new counsel on October 28, 2020, before the IJ issued its decision.

⁴ Specifically, "**WARNING:** If you indicate on the Notice of Appeal (Form EOIR-26) that you will file a brief or statement, you are expected to file a brief or statement in support of your appeal. If you fail to file a brief or statement within the time set for filing in this briefing schedule, the Board may summarily dismiss your appeal. See 8 CFR § 1003.1(d)(2)(i)(E)."

Despite these warnings, Castillo-De Molina never filed a brief. Instead, the day after her brief was due, Castillo-De Molina moved to remand arguing that Quichiz, her prior counsel, had been ineffective before the immigration judge. She attached to her motion: (1) a complaint she filed with the Illinois Attorney Registration and Disciplinary Commission (ARDC) against Quichiz; (2) the receipt she received from the ARDC; (3) a declaration in support of her complaint; and (4) Quichiz's response to the complaint, with exhibits. The Board acknowledged receipt of the motion on June 13, 2022, but noted that the briefing schedule remained as set.

The Board—with a single judge presiding, *see* 8 C.F.R. § 1003.1(d)(2)(i)(E)—summarily dismissed the appeal and denied Castillo-De Molina's motion to remand. The Board reasoned Castillo-De Molina's notice of appeal did not sufficiently or specifically identify the grounds for her appeal and that she did not file an additional brief when she said she would. The Board also denied the motion to reopen because, in its view, Castillo-De Molina did not provide any detail about how she was prejudiced by Quichiz's representation or identify any additional evidence or legal arguments she would have made before the IJ had she been represented by someone else. The Board concluded that Quichiz still provided Castillo-De Molina with thorough representation by eliciting her testimony and arguing for asylum, noting that the IJ ruled on the merits as well as the procedural issues.

II. DISCUSSION

A. Summary Dismissal

In her petition for review, Castillo-De Molina argues that the Board erred in summarily dismissing her appeal under 8 C.F.R. § 1003.1(d)(2)(i)(E). That regulation allows a single Board member to summarily dismiss an appeal if the party appealing indicates "that he or she will file a brief or statement in support of the appeal and, thereafter, does not file such a brief or statement, or reasonably explain his or her failure to do so, within the time set for filing." We have repeatedly held that the Board may summarily dismiss appeals under § 1003.1(d)(2)(i)(E) when parties promise to file a brief, are warned of the consequences if they do not, and still fail to do so. *See Cortina-Chavez v. Sessions*, 894 F.3d 865, 868 (7th Cir. 2018) (collecting cases).

Castillo-De Molina ignores this body of case law and instead argues that her notice of appeal satisfied another regulation governing what a notice of appeal must include. *See* 8 C.F.R. § 1003.3(b). Indeed, she does not cite § 1003.1(d)(2)(i)(E) once in her opening brief before us and offers only a conclusory argument in her reply that her

notice of appeal is sufficient to overcome the regulation's filing requirement. But in *Kokar v. Gonzales*, we rejected the idea that a notice of appeal may satisfy § 1003.1(d)(2)(i)(E) by taking the place of the brief that regulation contemplates. 478 F.3d 803, 809–10 (7th Cir. 2007). Castillo-De Molina makes no convincing argument why we should conclude otherwise here.

B. Motion to Reopen

Castillo-De Molina also petitions us to review the Board's denial of her motion to reopen, in which she asserted her counsel before the IJ was ineffective. We review the Board's denial of a motion to reopen for an abuse of discretion. *Patel v. Gonzales*, 496 F.3d 829, 831 (7th Cir. 2007). Under this "deferential" review, we will deny review unless the Board's decision "was made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis such as invidious discrimination against a particular race or group." *Perez-Perez v. Wilkinson*, 988 F.3d 371, 374 (7th Cir. 2021) (quoting *Gamero v. Barr*, 929 F.3d 464, 468 (7th Cir. 2019)).

Noncitizens asserting ineffective assistance of counsel claims in immigration proceedings must follow the procedural requirements outlined in *In re Lozada*, 19 I. & N. Dec. 637 (BIA 1988) and demonstrate prejudice. See *Sanchez v. Sessions*, 894 F.3d 858, 862–63 (7th Cir. 2018). All agree that Castillo-De Molina fulfilled the procedural requirements, so we only discuss whether she was prejudiced by her counsel's performance. That prong requires Castillo-De Molina to show that her counsel's alleged errors "actually had the potential for affecting the outcome of the proceedings." *Id.* at 862–63 (citation omitted).

Castillo-De Molina argues that she was prejudiced by her counsel's failure to timely submit the biometric and biographical information and by the "significant gaps in evidence" left by her counsel's failure to submit documentary evidence to support her testimony. True, her counsel's failure to submit the biometric and biographical information provided an independent reason for the IJ to dismiss Castillo-De Molina's I-589 application. But the IJ still proceeded to Castillo-De Molina's hearing at which her counsel represented her and elicited her testimony about her experiences in El Salvador—testimony which the IJ found credible. Based on that testimony, the IJ denied Castillo-De Molina's I-589 application on the merits. On that score, Castillo-De Molina does not explain what evidence her prior counsel failed to introduce or how such evidence would have done more than her own testimony to support her application. See *Sanchez v. Keisler*, 505 F.3d 641, 647 (7th Cir. 2007) (noting the necessity of new evidence

in motions to reopen for ineffective assistance of counsel). Nor does Castillo-De Molina explain what arguments her prior counsel failed to make based on that testimony. Castillo-De Molina's vague and conclusory statements of evidentiary gaps are insufficient to show that her counsel's failures had the potential for affecting the outcome of her case given the IJ's consideration of her testimony and rejection of her arguments. The Board did not abuse its discretion in denying Castillo-De Molina's motion to reopen.

III. CONCLUSION

For the foregoing reasons, we DENY Castillo-De Molina's petition for review.