

United States Court of Appeals
For the Eighth Circuit

No. 20-2726

Tobias Zuniga-Padron

Petitioner

v.

Merrick B. Garland, Attorney General of the United States¹

Respondent

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

Submitted: March 11, 2021

Filed: March 18, 2021

[Unpublished]

Before KELLY, ERICKSON, and STRAS, Circuit Judges.

PER CURIAM.

¹Attorney General Garland is substituted for his predecessor pursuant to Federal Rule of Appellate Procedure 43(c).

Tobias Zuniga-Padron, a native and citizen of Mexico, petitions for review of an order of the Board of Immigration Appeals (BIA), which upheld an immigration judge's decision denying his motion to reopen based on the alleged ineffective assistance of counsel.

We review the denial of a motion to reopen for abuse of the agency's broad discretion, recognizing that motions to reopen are viewed with disfavor. See Kucana v. Holder, 558 U.S. 233, 242 (2010); INS v. Abudu, 485 U.S. 94, 107 (1988); Caballero-Martinez v. Barr, 920 F.3d 543, 549 (8th Cir. 2019). After careful review, we conclude that, even assuming counsel's performance was deficient, the BIA acted within its discretion when it determined Zuniga-Padron did not demonstrate the requisite prejudice because he failed to identify any particular evidence or set forth the legal or factual basis for a new or supplemental claim. See 8 U.S.C. § 1229a(c)(7)(B); 8 C.F.R. § 1003.23(b)(3); Ortiz-Puentes v. Holder, 662 F.3d 481, 485 (8th Cir. 2011) (concluding that the BIA did not abuse its discretion in finding petitioners failed to show the requisite prejudice when they did not show what additional evidence witness would have offered or otherwise proffer evidence to support claim); Obleshchenko v. Ashcroft, 392 F.3d 970, 972-73 (8th Cir. 2004) (concluding that petitioners failed to demonstrate prejudice when they argued competent counsel would have submitted corroborating evidence but then failed to file relevant corroborating documents).

Accordingly, we deny the petition for review.
