BIA
A220 282 559/560

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 3rd day of November, two thousand twenty-six.

PRESENT:

ROBERT D. SACK,
DEBRA ANN LIVINGSTON,
MYRNA PÉREZ,
Circuit Judges.

JENNY FERNANDA QUINTEROS-ORTEGA, F.E.G.-Q.,
Petitioners,

v. **24-852**
NAC

TODD BLANCHE, UNITED STATES ATTORNEY GENERAL,
Respondent.

FOR PETITIONERS:	H. Raymond Fasano, Esq., Youman, Madeo & Fasano, LLP, New York, NY
FOR RESPONDENT:	Brandon Thomas Callahan, Office of Immigration Litigation, United States Department of Justice, Washington, DC.

UPON DUE CONSIDERATION of this petition for review of a Board of Immigration Appeals ("BIA") decision, it is hereby ORDERED, ADJUDGED, AND DECREED that the Government's motion for summary denial is CONSTRUED as its brief and the petition for review is DENIED.

Petitioners Jenny Fernanda Quinteros-Ortega and her minor son, natives and citizens of Ecuador, seek review of a March 8, 2024 decision of the BIA denying their second motion to reopen removal proceedings. *In re Jenny Fernanda-Quinteros-Ortega & F.E.G.-Q.*, Nos. A 220 282 559/560 (B.I.A. Mar. 8, 2024). We assume the parties' familiarity with the underlying facts and procedural history.

In lieu of filing a brief, the Government moved for summary denial of the petition. Rather than determine that the petition is frivolous, as required for summary denial, we construe the Government's motion as its brief and review the petition on the merits. *See United States v. Davis*, 598 F.3d 10, 13–14 (2d Cir. 2010) (describing summary disposition as "a rare exception" appropriate only where an appeal is "truly frivolous"); *Pillay v. INS*, 45 F.3d 14, 17 (2d Cir. 1995).

We review the BIA's denial of a motion to reopen for abuse of discretion and its factual findings regarding country conditions for substantial evidence. *See Shao v. Mukasey*, 546 F.3d 138, 168–69 (2d Cir. 2008). A noncitizen ordinarily may file only one motion to reopen and must do so within 90 days of the final administrative decision. *See* 8 U.S.C. § 1229a(c)(7)(A), (C)(i). Those limitations do not apply when the motion seeks asylum or related relief based on material evidence of changed country conditions that was unavailable and could not have been discovered or presented at the prior proceeding. *See id.* § 1229a(c)(7)(C)(ii).

The BIA denied Quinteros-Ortega's motion after concluding that she had not demonstrated a material change in country conditions. The Board observed that her new evidence showed "the same type of violence within Ecuador as was considered below" and that her "lack of direct comparison of country conditions undermine[d] [her] ability to meet [her] burden of proof." CAR at 4.

Quinteros-Ortega adequately challenges that reasoning in this Court. Her brief argues that the evidence submitted with her motion demonstrated a material worsening of conditions after her 2022 merits hearing and faults the BIA for failing adequately to engage with evidence describing an "unprecedented wave of violence" and the Ecuadorian government's diminished ability to control criminal

gangs. Pet'r Br. at 8, 11–14. We therefore do not treat her challenge to the BIA's changed-conditions determination as abandoned.

Moreover, a petitioner need not demonstrate the emergence of an entirely new *type* of danger to establish changed country conditions. Evidence that preexisting conditions have materially worsened may suffice. *See Poradisova v. Gonzales*, 420 F.3d 70, 81–83 (2d Cir. 2005) (holding that the BIA abused its discretion by dismissing as "merely cumulative" evidence showing that preexisting antisemitism had significantly worsened). And although the movant bears the burden of establishing changed country conditions, the BIA must itself "compare the evidence of country conditions submitted with the motion to those that existed at the time of the merits hearing below." *Tanusantoso v. Barr*, 962 F.3d 694, 698 (2d Cir. 2020) (quoting *In re S-Y-G-*, 24 I. & N. Dec. 247, 253 (B.I.A. 2007)). We do not read the BIA's decision here to dispense with that obligation; indeed, the BIA cited *Tanusantoso* and stated that it had undertaken the required comparison. CAR at 4.

We need not decide whether the evidence compelled the BIA to find materially changed country conditions because Quinteros-Ortega did not establish prima facie eligibility for the relief she seeks. A movant seeking reopening must

demonstrate a "realistic chance" that she will be able to establish eligibility for relief in reopened proceedings. *Poradisova*, 420 F.3d at 78.

First, Quinteros-Ortega did not establish a realistic chance of obtaining asylum or withholding or removal. Both forms of relief require a connection between the harm feared and a statutorily protected ground. *See* 8 U.S.C. §§ 1101(a)(42), 1158(b)(1)(B)(i), 1231(b)(3)(A). Quinteros-Ortega's submissions describe serious and worsening gang violence and crime in Ecuador, but they do not identify a protected ground on account of which she or her son would be targeted. Her affidavit identifies murders, robberies, political assassinations, and other crimes and states that she fears that she and her son may also become victims. CAR at 19–20. But she does not allege that either has previously been attacked or threatened, that any gang has expressed an interest in them, or that a persecutor would target them because of race, religion, nationality, political opinion, or membership in a particular social group. Although an earlier filing stated generally that Quinteros-Ortega feared being targeted as a member of "a particular social group," CAR at 68, she did not identify the asserted group or explain any nexus between membership in it and the harm she fears. General crime and violence, however serious, do not without more establish persecution

on account of a protected ground. *See Melgar de Torres v. Reno*, 191 F.3d 307, 313–14 (2d Cir. 1999).

Nor has Quinteros-Ortega shown a realistic chance of establishing entitlement to protection under the Convention Against Torture ("CAT"). CAT does not require a nexus to a protected ground, but an applicant must establish that she is "more likely than not" to be tortured if removed. 8 C.F.R. § 1208.16(c)(2). The country-conditions evidence describes serious gang violence and limitations on the Ecuadorian government's ability to control it. But Quinteros-Ortega offers no particularized evidence that she or her son is likely to be subjected to torture. Her reliance on the generalized risk created by worsening violence is insufficient. *See Lin v. U.S. Dep't of Just.*, 432 F.3d 156, 160 (2d Cir. 2005) (requiring "particularized evidence" that the applicant is likely to be tortured).

For the foregoing reasons, the Government's motion for summary denial is CONSTRUED as its brief and the petition for review is DENIED. All other pending motions and applications are DENIED and stays VACATED.

FOR THE COURT:
Catherine O'Hagan Wolfe,
Clerk of Court