

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Xiao Ying Liu v. United States Department of Justice

342 F. App'x 695 (2d Cir. 2009) · No. Nos. A097 160 508, A097 160 509 · Decided August 18, 2009

SUMMARY

The United States Court of Appeals for the Second Circuit denied Xiao Ying Liu and Shi Yu Li's petition for review of the Board of Immigration Appeals' denial of their untimely motion to reopen. The court held that the petitioners failed to demonstrate materially changed country conditions sufficient to excuse the filing deadline and vacated any stay of removal.

CASE DETAILS

COURT	United States Court of Appeals for the Second Circuit
WRITING FOR THE COURT	Jacobs; Leval; Newman
JURISDICTION	Federal
DECIDED	August 18, 2009
DOCKET	Nos. A097 160 508, A097 160 509
DISPOSITION	denied
PROCEDURAL POSTURE	Petition for review of the Board of Immigration Appeals' denial of a motion to reopen removal proceedings.
STANDARD OF REVIEW	The denial of a motion to reopen is reviewed for abuse of discretion. Agency factual findings concerning country conditions are reviewed under the substantial-evidence standard when the agency considers relevant country-conditions evidence.
PRECEDENTIAL VALUE	Nonprecedential summary order
PARTIES	Xiao Ying Liu, Shi Yu Li v. United States Department of Justice

TOPICS

removal proceedings appellate procedure judicial review of agency action administrative law
standard of review

PRACTICE AREAS

Immigration Administrative Law Appellate Procedure

QUESTIONS PRESENTED

1. Whether the BIA abused its discretion by denying petitioners' untimely motion to reopen for failure to demonstrate materially changed country conditions sufficient to excuse the filing deadline.
2. Whether the BIA failed to consider petitioners' particularized evidence regarding changed country conditions.

HOLDINGS

1. A court reviews the agency's denial of a motion to reopen for abuse of discretion.
2. When the agency considers relevant evidence of country conditions in evaluating a motion to reopen, its factual findings are reviewed under the substantial-evidence standard.
3. The BIA did not err in denying petitioners' untimely motion to reopen because petitioners failed to demonstrate materially changed country conditions sufficient to excuse the filing limitation.

KEY QUOTATIONS

“We do not ourselves attempt to resolve conflicts in record evidence, a task largely within the discretion of the agency” (696)

FACTUAL BACKGROUND

Petitioners Xiao Ying Liu and Shi Yu Li are natives and citizens of the People's Republic of China. They filed an untimely motion to reopen and argued that changed country conditions, including evidence relating to China's family-planning policy, excused the filing deadline. The BIA concluded that petitioners had not demonstrated materially changed country conditions and had not shown that it ignored their particularized evidence.

PROCEDURAL HISTORY

The BIA denied petitioners' motion to reopen on August 31, 2007. Petitioners sought review in the Second Circuit, arguing that changed country conditions excused the untimely filing and that the BIA failed to consider particularized evidence. The court denied the petition for review, vacated any previously granted stay of removal, dismissed any pending stay motion as moot, and denied oral argument.

DISPOSITION

denied

CASES CITED

- Ali v. Gonzales, 448 F.3d 515, 517 (2d Cir. 2006)
- Jian Hui Shao v. Mukasey, 546 F.3d 138, 169-72 (2d Cir. 2008)
- Wei Guang Wang v. BIA, 437 F.3d 270, 275 (2d Cir. 2006)
- Xiao Ji Chen v. U.S. Department of Justice, 471 F.3d 315, 337 n. 17 (2d Cir. 2006)
- Jian Hui Shao v. Mukasey, 546 F.3d 138, 172 (2d Cir. 2008)

OPINION

PER CURIAM.

SUMMARY ORDER Petitioners Xiao Ying Liu and Shi Yu Li, natives and citizens of the People's Repub-*696lie of China, seek review of the August 31, 2007 order of the BIA, denying their motion to reopen. In re Xiao Ying Liu, Shi Yu Li, Nos. A097 160 508, A097 160 509 (B.I.A. Aug. 31, 2007).

We assume the parties' familiarity with the underlying facts and procedural history in this case. We review the agency's denial of a motion to reopen for abuse of discretion. *Ali v. Gonzales*, 448 F.3d 515, 517 (2d Cir.2006). Where the agency considers relevant evidence of country conditions in evaluating a motion to reopen, we review the agency's factual findings under the substantial evidence standard.

See *Jian Hui Shao v. Mukasey*, 546 F.3d 138, 169 (2d Cir.2008). We find that the agency did not err in denying petitioners' untimely motion to reopen. Petitioners argue that the BIA erred in concluding that they failed to demonstrate material changed country conditions sufficient to excuse the time limitation for filing their motion to reopen.

However, this argument fails where we have previously reviewed the BIA's consideration of similar evidence in the context of an untimely motion to reopen and have found no error in its conclusion that such evidence was insufficient to establish material changed country conditions. See *id.* at 169-72 (noting that "[w]e do not ourselves attempt to resolve conflicts in record evidence, a task largely within the discretion of the agency"); see also *Wei Guang Wang v. BIA*, 437 F.3d 270, 275 (2d Cir.2006) (noting that while the BIA must consider evidence such as "the oft-cited Aird affidavit, which [it] is asked to consider time and again[,],... it may do so in summary fashion without a reviewing court presuming that it has abused its discretion").

Moreover, contrary to petitioners' argument, we find nothing in the record that suggests that the BIA ignored the particularized evidence that they submitted in determining that they failed to demonstrate changed country conditions. See *Xiao Ji Chen v. U.S. Dep't of Justice*, 471 F.3d 315, 337 n. 17 (2d Cir.2006); cf. *Jian Hui Shao*, 546 F.3d at 172 (finding no error in the BIA's determination that evidence referencing the family planning policy's mandatory sterilization requirement does not indicate that sterilization will be performed by force).

For the foregoing reasons, the petition for review is DENIED. As we have completed our review, any stay of removal that the Court previously granted in this petition is VACATED, and any pending motion for a stay of removal in this petition is DISMISSED as moot. Any pending request for oral argument in this petition is DENIED in accordance with Federal Rule of Appellate Procedure 34(a)(2), and Second Circuit Local Rule 34(b).

