

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Jiang v. Sessions

No. 16-3804, United States Court of Appeals for the Second Circuit (May 31, 2018)

SUMMARY

Jiang v. Sessions, 2d Cir. 2018 (unpublished). Petition for review of BIA denial of motion to reopen removal order. Court held agency did not abuse discretion in denying motion as untimely where petitioner failed to demonstrate material change in country conditions for Christians in China, as evidence showed similar government mistreatment of unregistered Christian groups existed before his 2003 proceedings. Key topics: motion to reopen, untimely filing, changed country conditions exception, asylum, withholding of removal, Convention Against Torture, persecution of Christians in China.

CASE DETAILS

COURT	United States Court of Appeals for the Second Circuit
WRITING FOR THE COURT	Robert D. Sack; Debra Ann Livingston; Christopher F. Droney
JURISDICTION	Federal
DECIDED	May 31, 2018
DOCKET	16-3804
DISPOSITION	denied
PROCEDURAL POSTURE	Petition for review of a BIA decision affirming denial of motion to reopen.
STANDARD OF REVIEW	Abuse of discretion, see Jian Hui Shao v. Mukasey, 546 F.3d 138, 168-69 (2d Cir. 2008).
PRECEDENTIAL VALUE	Unpublished
PARTIES	Dian Biao Jiang v. Jefferson B. Sessions III

TOPICS

asylum removal proceedings standard of review administrative law judicial review of agency action

PRACTICE AREAS

Immigration Law

QUESTIONS PRESENTED

1. Whether the agency erred in denying Jiang's motion to reopen as untimely, specifically whether he demonstrated a material change in country conditions in China regarding treatment of Christians.

HOLDINGS

1. The agency did not abuse its discretion in finding that Jiang failed to demonstrate a material change in country conditions because the evidence showed that the Chinese government's treatment of unregistered Christian groups was unfavorable before and after his 2003 proceedings and did not reveal increased persecution in his home province.

KEY QUOTATIONS

“In determining whether evidence accompanying a motion to reopen demonstrates a material change in country conditions that would justify reopening, [the agency] compare[s] the evidence of country conditions submitted with the motion to those that existed at the time of the merits hearing below.” (2)

“An applicant does not have a well-founded fear of persecution if the applicant could avoid persecution by relocating to another part of the applicant’s country of nationality.” (3)

FACTUAL BACKGROUND

Jiang, a native and citizen of China, was ordered removed in 2003. In 2015, he filed a motion to reopen, asserting that he had converted to Christianity in the United States and that conditions for Christians had worsened in China. He argued that the changed conditions excused the untimely filing and demonstrated his prima facie eligibility for asylum, withholding of removal, and CAT relief.

PROCEDURAL HISTORY

The IJ denied Jiang's motion to reopen on April 27, 2015. The BIA affirmed on October 18, 2016. Jiang's motion to reopen was untimely filed 12 years after his 2003 removal order.

DISPOSITION

denied

CASES CITED

- Wangchuck v. Dep't of Homeland Sec., 448 F.3d 524 (2d Cir. 2006)
- Jian Hui Shao v. Mukasey, 546 F.3d 138 (2d Cir. 2008)
- In re S-Y-G-, 24 I. & N. Dec. 247 (B.I.A. 2007)