

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Shao Hui Zhang v. United States Department of Justice

342 F. App'x 692 (2d Cir. 2009) · Decided August 18, 2009

SUMMARY

The Second Circuit denied Shao Hui Zhang’s petition for review of the BIA’s denial of his untimely motion to reopen. The court held that Zhang had not shown materially changed country conditions sufficient to excuse the filing deadline and found no basis to conclude that the BIA ignored relevant evidence.

CASE DETAILS

COURT	United States Court of Appeals for the Second Circuit
WRITING FOR THE COURT	Per curiam; Jacobs; Leval; Newman
JURISDICTION	Federal
DECIDED	August 18, 2009
DISPOSITION	writ_denied
PROCEDURAL POSTURE	Petition for review of the Board of Immigration Appeals' denial of an untimely motion to reopen.
STANDARD OF REVIEW	The denial of a motion to reopen is reviewed for abuse of discretion. 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PRECEDENTIAL VALUE	Nonprecedential summary order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	Shao Hui Zhang v. United States Department of Justice

TOPICS

- removal proceedings
- immigration
- judicial review of agency action
- standard of review
- appellate procedure

PRACTICE AREAS

- Immigration
- Administrative Law
- Appellate Procedure

QUESTIONS PRESENTED

1. Whether the BIA abused its discretion by denying Zhang's untimely motion to reopen for failure to demonstrate materially changed country conditions sufficient to excuse the filing deadline.
2. Whether the BIA improperly ignored or failed to address the evidence Zhang submitted concerning country conditions.

HOLDINGS

1. The BIA did not abuse its discretion in denying Zhang's untimely motion to reopen because Zhang failed to establish materially changed country conditions sufficient to excuse the filing deadline.
2. The record did not compel the conclusion that the BIA ignored Zhang's evidence.

KEY QUOTATIONS

“We do not ourselves attempt to resolve conflicts in record evidence, a task largely within the discretion of the agency” (342 F. App'x at 692)

“it may do so in summary fashion without a reviewing court presuming that it has abused its discretion” (342 F. App'x at 692)

“expressly parse or refute on the record each individual argument or piece of evidence offered by the petitioner” (342 F. App'x at 692)

FACTUAL BACKGROUND

Shao Hui Zhang is a native and citizen of the People's Republic of China. He filed an untimely motion to reopen immigration proceedings, arguing that materially changed country conditions excused the filing deadline and that the BIA failed to consider his evidence. The BIA denied the motion, and the Second Circuit found that the record did not compel a contrary conclusion.

PROCEDURAL HISTORY

The Board of Immigration Appeals denied Zhang's motion to reopen on September 28, 2007. Zhang petitioned the Second Circuit for review, arguing that the BIA improperly rejected his claim of materially changed country conditions and ignored evidence he submitted.

DISPOSITION

writ_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)

OPINION

PER CURIAM.

SUMMARY ORDER Petitioner Shao Hui Zhang, a native and citizen of the People's Republic of China, seeks review of a September 28, 2007 order of the BIA, denying his motion to reopen. In re Shao Hui Zhang, No. A095 479 310 (B.I.A. Sep. 28, 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 Zhang's untimely motion to reopen. Zhang argues that the BIA erred in concluding that he failed to demonstrate material changed country conditions sufficient to excuse the time limitation for filing his 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").

To the extent Zhang argues that the BIA ignored the evidence he submitted, nothing in the record compels us to agree. See *Jian Hui Shao*, 546 F.3d at 169 (recognizing that the Court has rejected the notion that the agency must "expressly parse or refute on the record each individual argument or piece of evidence offered by the petitioner"); see also *Xiao Ji Chen v. U.S. Dep't of Justice*, 471 F.3d 315, 337 n. 17 (2d Cir.2006) (presuming that the agency "has taken into account all of the evidence before [it], unless the record compellingly suggests otherwise").

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).

