

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Singh v. Barr

No. 19-732, United States Court of Appeals for the Second Circuit (October 27, 2020)

SUMMARY

Immigration law; motion to reopen; untimely filing; changed country conditions exception; adverse credibility determination. The Second Circuit held that the BIA did not abuse its discretion in denying an untimely motion to reopen because the petitioner's new evidence of changed country conditions in India failed to overcome the prior adverse credibility finding, as it did not address the inconsistent statements underlying that determination. To qualify for the changed country conditions exception to the time limit, a movant must either rebut the prior adverse credibility finding or show the new claim is independent of the discredited evidence.

CASE DETAILS

COURT	United States Court of Appeals for the Second Circuit
WRITING FOR THE COURT	Jon O. Newman; John M. Walker, Jr.; Michael H. Park
JURISDICTION	Federal
DECIDED	October 27, 2020
DOCKET	19-732
DISPOSITION	denied
PROCEDURAL POSTURE	Petition for review of BIA decision denying motion to reopen.
STANDARD OF REVIEW	abuse of discretion
PRECEDENTIAL VALUE	Unpublished
PARTIES	Karnail Singh v. William P. Barr, United States Attorney General

TOPICS

removal proceedings

asylum

judicial review of agency action

standard of review

evidence

PRACTICE AREAS

Immigration Law

QUESTIONS PRESENTED

1. Whether the BIA abused its discretion in denying Singh's untimely motion to reopen based on his failure to overcome the underlying adverse credibility determination.

HOLDINGS

1. The BIA did not abuse its discretion because Singh failed to present material evidence that overcame the prior adverse credibility determination or showed an independent claim based on changed country conditions.

KEY QUOTATIONS

“We review the denial of a motion to reopen 'deferentially for abuse of discretion,' finding 'such abuse only if the BIA's decision-making was arbitrary or capricious' and 'review[ing] the BIA's fact-finding only for substantial evidence.’”

“[T]o prevail on a motion to reopen alleging changed country conditions where the persecution claim was previously denied based on an adverse credibility finding . . . , the [movant] must either overcome the prior determination or show that the new claim is independent of the evidence that was found to be not credible.”

“[E]vidence submitted by petitioner in support of . . . motion was not 'material' because it did not rebut the adverse credibility finding that provided the basis for the IJ's denial of petitioner's underlying asylum application.”

FACTUAL BACKGROUND

Singh, a native and citizen of India, was ordered removed in 2015 after an adverse credibility determination. In 2018, he filed a motion to reopen, arguing that changed country conditions due to the Congress Party gaining power in India led to police arresting and abusing his wife in an effort to locate him on account of his membership in the Sikh-affiliated Akali Dal Mann Party. He submitted his own unsworn statements and general country conditions evidence.

PROCEDURAL HISTORY

Petitioner Karnail Singh, a native and citizen of India, was ordered removed in 2015 after an adverse credibility determination. In 2018, he filed a motion to reopen, arguing changed country conditions. The BIA denied the motion as untimely and on the merits. He petitioned for review to the Second Circuit.

DISPOSITION

denied

CASES CITED

- Jian Hui Shao v. Mukasey, 546 F.3d 138, 168-69 (2d Cir. 2008)
- Kaur v. BIA, 413 F.3d 232, 234 (2d Cir. 2005)
- Matter of F-S-N-, 28 I. & N. Dec. 1, 3 (BIA 2020)

OPINION

PER CURIAM.

19-732 Singh v. Barr BIA A201 292 537 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 TO 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 27th day of October, two thousand twenty. PRESENT: JON O. NEWMAN, JOHN M. WALKER, JR., MICHAEL H. PARK, Circuit Judges.

_____ KARNAIL SINGH, Petitioner, v. 19-732 NAC
WILLIAM P. BARR, UNITED STATES ATTORNEY GENERAL, Respondent.

_____ FOR PETITIONER: Karnail Singh, pro se,
Richmond Hill, NY.

FOR RESPONDENT: Jeffrey Bossert Clark, Acting Assistant Attorney General; Kiley Kane, Senior Litigation Counsel; Andrea N. Gevas, Trial Attorney, 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 petition for review is DENIED.

Petitioner Karnail Singh, a native and citizen of India, seeks review of a February 22, 2019, decision of the BIA, denying his motion to reopen. In re Karnail Singh, No. A201 292 537 (B.I.A. Feb. 22, 2019). We assume the parties’ familiarity with the underlying facts and procedural history.

We review the denial of a motion to reopen “deferentially for abuse of discretion,” finding “such abuse only if the BIA’s decision-making was arbitrary or capricious” and “review[ing] the BIA’s fact-finding only for substantial evidence.” See *Jian Hui Shao v. Mukasey*, 546 F.3d 138, 168- 69 (2d Cir. 2008) (internal quotation marks omitted).

In his motion to reopen, Singh asserted that, because the Congress Party had gained power in India, police had arrested and abused his wife in an effort to locate and arrest him on account of his membership in the Sikh-affiliated Akali Dal Mann Party.

As support, he submitted his own written statements and general country conditions evidence. 2 It is undisputed that Singh's 2018 motion was untimely because it was filed more than two years after his removal order became final in 2015. See 8 U.S.C. § 1229a(c)(7)(C)(i); 8 C.F.R. § 1003.2(c)(2).

However, the time limitation for filing a motion to reopen does not apply if reopening is sought to apply for asylum and the motion "is based on changed country conditions arising in the country of nationality or the country to which removal has been ordered, if such evidence is material and was not available and would not have been discovered or presented at the previous proceeding." 8 U.S.C. § 1229a(c)(7)(C)(ii); 8 C.F.R. § 1003.2(c)(3). "[T]o prevail on a motion to reopen alleging changed country conditions where the persecution claim was previously denied based on an adverse credibility finding..., the [movant] must either overcome the prior determination or show that the new claim is independent of the evidence that was found to be not credible." Matter of F-S-N-, 28 I. & N. Dec.

1, 3 (BIA 2020); see also *Kaur v. BIA*, 413 F.3d 232, 234 (2d Cir. 2005) ("[E]vidence submitted by petitioner in support of... motion was not 'material' because it did not rebut the adverse credibility finding that provided the basis for the 3 IJ's denial of petitioner's underlying asylum application.").

The BIA did not err in concluding that Singh's unsworn statement that Indian police had abused his wife in an attempt to locate and arrest him for political reasons and the evidence of general conditions in India failed to overcome the underlying adverse credibility determination. That evidence did not address the findings that formed the basis for the adverse credibility determination—Singh's inconsistent statements regarding his alleged beatings on account of his political activities.

See *Kaur*, 413 F.3d at 234; Matter of F-S-N-, 28 I. & N. Dec. at 3. Accordingly, because Singh failed to overcome the adverse credibility determination, the BIA did not abuse its discretion in denying his untimely motion to reopen. See 8 U.S.C. § 1229a(c)(7)(C)(i); 8 C.F.R. § 1003.2(c)(2); *Kaur*, 413 F.3d at 234.

For the foregoing reasons, the petition for review is DENIED. All pending motions and applications are DENIED and stays VACATED. FOR THE COURT: Catherine O'Hagan Wolfe, Clerk of Court 4