

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PRECEDENTIAL VALUE	Unpublished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)

