

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JUN 09 2009

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

JIN DAN LIN, aka Kazuko Shibata,

Petitioner,

v.

ERIC H. HOLDER Jr., Attorney General,

Respondent.

No. 07-74342

Agency No. A077-283-071

MEMORANDUM \*

On Petition for Review of an Order of the  
Board of Immigration Appeals

Submitted June 5, 2009\*\*  
Las Vegas, Nevada

Before: GOULD and RAWLINSON, Circuit Judges, and BEISTLINE\*\*\*, District  
Judge.

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\* This disposition is not appropriate for publication and is not precedent  
except as provided by 9th Cir. R. 36-3.

\*\* The panel unanimously finds this case suitable for decision without  
oral argument. *See* Fed. R. App. P. 34(a)(2).

\*\*\* The Honorable Ralph R. Beistline, United States District Judge for the  
District of Alaska, sitting by designation.

Jin Dan Lin (Lin), a native and citizen of China, petitions for review of an order by the Board of Immigration Appeals (BIA) denying her motion to reopen and her request to file a successive asylum application.

1. The BIA did not abuse its discretion in denying Lin's motion, filed more than 90 days after the entry of the agency's final administrative order, as time barred, because Lin failed to establish a change in country conditions. *See* 8 U.S.C. § 1229a(c)(7)(C)(i), (C)(ii) (requiring that a change in country conditions be shown to avoid the 90-day time bar); *see also* *Chen v. Mukasey*, 524 F.3d 1028, 1030 (9th Cir. 2008) (same). Unlike the proceedings in *Shou Yung Guo v. Gonzales*, 463 F.3d 109 (2d Cir. 2006), the record reflects that the BIA considered the evidence offered by Lin to demonstrate changed country conditions. The BIA did not abuse its discretion in determining that the evidence was insufficient to establish a change in China's enforcement of its one-child policy, because the documents do not address Lin's marriage to a United States citizen, were not clearly unavailable prior to the initial removal hearings, or lacked sufficient authentication. *See He v. Gonzales*, 501 F.3d 1128, 1130-31 (9th Cir. 2007) (upholding BIA determination that documentary evidence was insufficient to establish changed country conditions where one document provided insufficient

details and the other document was an unauthenticated translation dated before the original removal proceedings).

2. To the extent Lin relies upon State Department country conditions reports for 2005 and 2006, those reports are not in the record and we may not take judicial notice of them or their contents. *See Fisher v. INS*, 79 F.3d 955, 963 (9th Cir. 1996) (en banc); *see also Singh v. Ashcroft*, 393 F.3d 903, 906 (9th Cir. 2004). Nor may we review the BIA's failure to take administrative notice of these reports absent any evidence that Lin requested the BIA to do so and it refused. *Fisher*, 393 F.3d at 963.

3. Lin's argument that she is entitled to file a free-standing asylum application pursuant to 8 U.S.C. § 1158(a)(2)(D) is foreclosed by our precedent. *See Chen*, 524 F.3d at 1032 (holding that the BIA's determination that an asylum application by an alien subject to a final order of removal "can be made only in connection with a motion to reopen, subject to the limitations of § 1229a(c)(7)[,]" is "reasonable, and we defer to it").

**PETITION FOR REVIEW DENIED.**