

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JUL 20 2009

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

DAVINDER SINGH,

Petitioner,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 05-73429

Agency No. A075-774-849

MEMORANDUM*

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

Submitted July 16, 2009**
San Francisco, California

Before: SILVERMAN, CLIFTON and M. SMITH, Circuit Judges.

Davinder Singh petitions for review of the Board of Immigration Appeals' (BIA) decision denying his second motion to reopen his removal proceedings. We review the BIA's denial of a motion to reopen for abuse of discretion, and uphold the BIA's decision "unless it is 'arbitrary, irrational, or contrary to law.'" *He v.*

* 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).

Gonzales, 501 F.3d 1128, 1130-31 (9th Cir. 2007) (quoting *Singh v. INS*, 295 F.3d 1037, 1039 (9th Cir. 2002)). We deny the petition for review.

The BIA did not abuse its discretion when it denied Singh's petition because he failed to produce evidence that the treatment of homosexuals changed in India after the Immigration Judge (IJ) rendered his decision. Singh had moved to reopen pursuant to 8 C.F.R. § 1003.2(c)(3)(ii), so the BIA properly evaluated whether he had established "changed circumstances arising in the country of nationality or in the country to which deportation has been ordered" using evidence that was "material and was not available and could not have been discovered or presented at the previous hearing." 8 C.F.R. § 1003.2(c)(3)(ii); *cf. Chen v. Mukasey*, 524 F.3d 1028, 1031-32 (9th Cir. 2008) (holding that it is reasonable for the BIA to use the stricter standard applicable to motions to reopen when considering a successive and untimely asylum application by an alien under order of removal, even if the more permissive standard of 8 U.S.C. § 1158(a)(2) could also apply).

It was within the BIA's discretion to conclude that Singh failed to provide material evidence of changed country conditions that was not available at the time of the IJ's hearing. The evidence that Singh now presents describes country conditions predating the IJ's decision, and Singh therefore could have discovered and presented the evidence at the time of his hearing. Singh's revelation of his homosexuality to his family and community is a changed personal circumstance

that does not provide a basis for a motion to reopen. *See He*, 501 F.3d at 1131-32.

Accordingly, Singh failed to meet the “changed country conditions” exception to the 90-day time limit for filing a motion to reopen.

PETITION DENIED.