

APR 23 2012

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

QING HE XU,

Petitioner,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 09-74031

Agency No. A098-356-856

MEMORANDUM*

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

Submitted April 17, 2012**

Before: LEAVY, PAEZ, and BEA, Circuit Judges.

Qing He Xu, a native and citizen of China, petitions for review of the Board of Immigration Appeals' ("BIA") order denying his motion to reopen. We have jurisdiction under 8 U.S.C. § 1252. We review for abuse of discretion the denial of

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

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

a motion to reopen, *Toufighi v. Mukasey*, 538 F.3d 988, 992 (9th Cir. 2008), and we deny the petition for review.

The BIA did not abuse its discretion in denying Xu's motion to reopen as untimely where the motion was filed a year and a half after the BIA's final decision, *see* 8 C.F.R. § 1003.2(c)(2), and Xu failed to demonstrate changed circumstances in China to qualify for the regulatory exception to the time limit, *see* 8 C.F.R. § 1003.2(c)(3)(ii); *Najmabadi v. Holder*, 597 F.3d 983, 988-89 (9th Cir. 2010); *see also Toufighi*, 538 F.3d at 996-97.

We reject Xu's contention that the BIA did not adequately address his evidence. *See Fernandez v. Gonzales*, 439 F.3d 592, 603 (9th Cir. 2006) (finding petitioner had not overcome the presumption that the BIA reviewed the record); *see also Najmabadi*, 597 F.3d at 990-91 (BIA must consider issues raised and announce its decision in a manner sufficient for reviewing court to perceive that it has heard and thought and not merely reacted).

PETITION FOR REVIEW DENIED.