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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>HAIYI YAN, a.k.a. Hai Yi Yan,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p>Respondent.</p>
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No. 10-71932

Agency No. A098-210-586

MEMORANDUM*

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

Submitted November 13, 2012**

Before: CANBY, TROTT, and W. FLETCHER, Circuit Judges.

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

discretion the denial of a motion to reopen. *Toufighi v. Mukasey*, 538 F.3d 988, 992 (9th Cir. 2008). We deny in part and dismiss in part the petition for review.

The BIA did not abuse its discretion in denying Yan's motion to reopen as untimely, where the motion was filed three years after the BIA's final order, *see* 8 C.F.R. § 1003.2(c)(2), and Yan failed to present sufficient evidence of changed circumstances in China to qualify for the regulatory exception to the time limit for filing motions to reopen, *see* 8 C.F.R. § 1003.2(c)(3)(ii); *Toufighi*, 538 F.3d at 996-97 (evidence was immaterial in light of prior adverse credibility determination).

We lack jurisdiction over any challenge Yan makes to the agency's underlying adverse credibility determination because this petition for review is not timely as to the agency's order finding him not credible. *See Toufighi*, 538 F.3d at 995.

PETITION FOR REVIEW DENIED in part; DISMISSED in part.