

JUN 13 2013

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

OSCAR GORDY EZEAKU,

Petitioner,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 08-74960

Agency No. A092-828-243

MEMORANDUM*

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

Argued and Submitted June 7, 2013
Pasadena, California

Before: GOULD and N.R. SMITH, Circuit Judges, and DU, District Judge.**

Oscar Gordy Ezeaku petitions for review of the Board of Immigration Appeals' (BIA) order dismissing his appeal from an immigration judge's (IJ)

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

** The Honorable Miranda Du, District Judge for the U.S. District Court for the District of Nevada, sitting by designation.

decision denying his application for asylum based on timeliness grounds. We have jurisdiction under 8 U.S.C. § 1252, and we grant the petition for review.

Ezeaku is a Nigerian national of Christian faith. Ezeaku entered the United States in 1981, but did not apply for asylum until July 2005. He argued that he was eligible for asylum based on the changed circumstances of his family members in Nigeria. Specifically, Ezeaku listed specific events which occurred to his family from 2001 through 2005 because of their Christian affiliation and opposition to Sharia law becoming enshrined in the Nigerian constitution. At the time of the IJ's decision and the BIA's affirmance, they did not have the benefit of this court's recent case in *Vahora v. Holder*, which addressed what constituted changed circumstances sufficient to excuse late filing of an asylum application. 641 F.3d 1038, 1042-48 (9th Cir. 2011). We therefore grant the petition and remand the matter back to the BIA for it to reconsider its decision as to whether the events and testimony provided by Ezeaku establish changed circumstances excusing his late filing of an asylum claim. *INS v. Ventura*, 537 U.S. 12, 16-18 (2002) (per curiam).

PETITION FOR REVIEW GRANTED; REMANDED.