

JUN 20 2013

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

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MOHAMMAD MONIR HOSSAIN,

Petitioner,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 08-74859

Agency No. A073-979-571

MEMORANDUM*

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

Submitted June 7, 2013**
Pasadena, California

Before: TROTT, LUCERO,*** and W. FLETCHER, Circuit Judges.

Mohammad Monir Hossain petitions this court for review of the Board of Immigration Appeal's denial of his third motion to reopen his removal

* 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).

*** The Honorable Carlos F. Lucero, Circuit Judge for the U.S. Court of Appeals for the Tenth Circuit, sitting by designation.

proceedings. We have jurisdiction under 8 U.S.C. § 1252(a)(5), and we deny the petition.

The IJ who initially adjudicated Hossain's asylum application determined that Hossain's testimony in support of his application for relief was "fabricated" and that he is not a member of the Jatiya Political Party. That determination, which Hossain does not contest, is conclusive. See Toufighi v. Mukasey, 538 F.3d 988, 996-97 (9th Cir. 2008)("[Petitioner] . . . failed to establish a prima facie case for eligibility because it had already been conclusively determined that he was not an apostate, and that Iranian officials would not impute this status to him because [petitioner] would never inform them of apostasy which never took place. The IJ's conclusive findings on this point also make the new evidence regarding persecution of apostates immaterial."). Thus, the Board correctly determined that the alleged increase in persecution of the Jatiya Political Party is immaterial because Hossain is not a member of that political party.

The Board also correctly concluded that Hossain's third motion to reopen is time and number barred. Hossain is not entitled to have these bars equitably tolled because Hossain was not prejudiced by his prior counsel's performance. Hossain's 2006 marriage, which took place more than a year after the deadline to file his motion to reopen, was not a timely basis for reopening his removal proceedings.

Id. at 993 (holding that an alien's motion to reopen based upon his marriage to a U.S. citizen and the birth of his U.S. citizen children was subject to the 90-day limitation).

Hossain's remaining, unsupported due process claim lacks merit.

PETITION DENIED.