

OCT 20 2014

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FENG CHEN,

Petitioner,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 12-70164

Agency No. A078-745-736

MEMORANDUM*

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

Argued and Submitted October 9, 2014
Portland, Oregon

Before: FISHER, CHRISTEN, and NGUYEN, Circuit Judges.

Feng Chen petitions for review of a decision of the Board of Immigration Appeals (BIA) denying his untimely motion to reopen his 2002 removal proceeding. We have jurisdiction pursuant to 8 U.S.C. § 1252. We review the

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

BIA's decision on a motion to reopen for abuse of discretion. *Kucana v. Holder*, 558 U.S. 233, 242 (2010).

Chen claims that the BIA erred in failing to evaluate his evidence of China's changed country conditions in light of his changed personal circumstances. In support of his claim, Chen presented his sworn affidavit, which arguably could show that he faced increased threats of persecution due to his political activities beginning in 2010. When the BIA denied Chen's motion, it did not have the benefit of our decision in *Chandra v. Holder*, which clarified that a motion to reopen may be justified when changed country conditions are made relevant by a change in petitioner's personal circumstances. 751 F.3d 1034, 1038-39 (9th Cir. 2014). Therefore, we remand to give the agency the chance to determine the impact of this intervening decision on its evaluation of Chen's claim that changed country conditions justify reopening his removal proceeding, and for further proceedings consistent with this disposition. *See INS v. Ventura*, 537 U.S. 12, 16-18 (2002) (per curiam) (recommending remand to the BIA to address matters entrusted by law to the agency that were not considered in the first instance).

PETITION FOR REVIEW GRANTED.