NOT FOR PUBLICATION

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APR 15 2024

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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JIE GAO, Petitioner, v. MERRICK B. GARLAND, Attorney General, Respondent.	No. 23-692 Agency No. A095-448-618 MEMORANDUM[*]

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

Submitted April 11, 2024[**]
Pasadena, California

Before: SILER[***], BEA, and IKUTA, Circuit Judges.

Jie Gao, a native and citizen of China, petitions for review of the Board of Immigration Appeals' ("BIA") order that denied her third motion to reopen an

[*] This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 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 Eugene E. Siler, United States Circuit Judge for the Court of Appeals, 6th Circuit, sitting by designation.

Immigration Judge's 2002 *in absentia* removal order. Because the parties are familiar with the facts, we do not recount them here. We have jurisdiction pursuant to 8 U.S.C. § 1252, and we deny the petition.

"We review a BIA ruling on a motion to reopen for an abuse of discretion, and will reverse the denial of a motion to reopen only if the Board acted arbitrarily, irrationally, or contrary to law." *Martinez-Hernandez v. Holder*, 778 F.3d 1086, 1088 (9th Cir. 2015) (per curiam) (quoting *Maravilla Maravilla v. Ashcroft*, 381 F.3d 855, 857 (9th Cir. 2004)).

The BIA denied Petitioner's time- and number-barred motion to reopen because Petitioner failed to produce material evidence of changed country conditions for Christians in China. *See* 8 U.S.C. § 1229a(c)(7)(C)(ii); 8 C.F.R. § 1003.2(c)(3)(ii). "To prevail on a motion to reopen on the basis of changed country conditions, a petitioner must clear four hurdles. A petitioner must (1) produce evidence that conditions have changed in the country of removal; (2) demonstrate that the evidence is material; (3) show that the evidence was not available and would not have been discovered or presented at the previous hearings; and (4) demonstrate that the new evidence, when considered together with the evidence presented at the original hearing, would establish prima facie eligibility for the relief sought." *Agonafer v. Sessions*, 859 F.3d 1198, 1204 (9th Cir. 2017) (internal quotation marks omitted).

The BIA did not abuse its discretion when it determined that Petitioner failed to produce material evidence of changed conditions in China between her original removal hearing in 2002 and her third motion to reopen in 2021. The BIA relied on record evidence, including a report submitted by Petitioner that stated "the U.S. State Department [has] designate[d] China as a country of particular concern over religious freedom annually since 1999." The BIA's conclusion is further supported by other documents Petitioner submitted that describe China's oppressive policies toward Christians as "ongoing" or "continued." *See Rodriguez v. Garland*, 990 F.3d 1205, 1210 (9th Cir. 2021). Based on the record before the BIA, the BIA's decision to deny the motion to reopen was neither arbitrary nor irrational. *See Martinez-Hernandez*, 778 F.3d at 1088.

Petitioner faults the BIA for mentioning that much of the evidence she submitted with her motion to reopen was available prior to 2019, when her second motion to reopen was denied. But the BIA's aside was immaterial to its decision because the BIA explicitly compared Petitioner's evidence of country conditions in China submitted with the present motion to country conditions in 2002—the year of Petitioner's removal hearing—not 2019. Petitioner's characterization of the BIA's comment as "legal error" misreads the BIA's order.

Petitioner also argues that evidence she submitted regarding a change of Chinese religious regulations—from "1994 State Council regulations" to

"Regulations on Religious Affairs of 2018" and "Measures on the Administration of Religious Groups" of 2020—would compel any rational adjudicator to find changed country conditions for Christians in China. But Petitioner fails to identify a "qualitative[]" change in China's policy toward Christians. *See Agonafer*, 859 F.3d at 1206. The record supports the BIA's determination that China's ongoing and continuous policy of persecuting Christians has persisted since before 2002. Thus, the BIA reasonably concluded that "the Chinese government continues to take various repressive and harassing actions against Christians and members of other religions."

To be sure, Petitioner submitted some reports with her third motion to reopen that described China's new regulations as leading to "increased control or persecution of religious groups." Though evidence of increased persecution and violence may demonstrate a material change in country conditions, that increase must constitute a qualitative difference from the conditions at the time of a petitioner's original hearing. *Id.* Here, however, the BIA correctly observed that the evidence Petitioner submitted regarding conditions as they existed at the time of her 2002 hearing are qualitatively similar to the evidence she submitted on conditions in 2021; documents from both periods report Christian "house churches" in China being targeted, surveilled, and even destroyed. To reach its conclusion, the BIA was not required to perform an "exegesis" on each assertion made in the nearly

400 pages of documents submitted. *See Najmabadi v. Holder*, 597 F.3d 983, 990 (9th Cir. 2010) (quoting *Lopez v. Ashcroft*, 366 F.3d 799, 807 n.6 (9th Cir. 2004)). In sum, the record supports the BIA's conclusion that Petitioner failed to establish a material change in conditions for Christians in China. Hence, we deny the petition for review.

PETITION DENIED.