NOT FOR PUBLICATION

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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

SUNDAY KAYODE KUNKUSHI, Petitioner, v. TODD BLANCHE, Attorney General, Respondent.	No. 25-7484 Agency No. A207-565-782 MEMORANDUM[*]

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

Submitted October 23, 2026[**]
San Francisco, California

Before: CALLAHAN, LEE, and KOH, Circuit Judges.

Sunday Kayode Kunkushi, a native and citizen of Nigeria, seeks review of the denial of his motion to reopen by the Board of Immigration Appeals ("BIA"). He contends that the combination of his past persecution, the election of the son of a former prominent politician, and his mental illness showed changed conditions in

[*] 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).

Nigeria and that he will be persecuted if returned to Nigeria. The BIA found that Kunkushi had not shown a material change in country conditions or that he was likely to be persecuted if returned to Nigeria. We deny Kunkushi's timely filed petition for review.

A denial of a motion to reopen is reviewed for abuse of discretion and relief can only be granted if the BIA's decision is arbitrary, irrational, or contrary to law. *Kaur v. Garland*, 2 F.4th 823, 829 (9th Cir. 2021).

First, Kunkushi has not shown a meaningful change in country conditions. He fears persecution if returned to Nigeria because Oluomo Diya, the son of a former Nigerian general, was elected to a local governmental position. Back in 1997, Diya's father had had Kunkushi arrested as a suspected traitor. However, Kunkushi offers no response to the BIA's determination that Diya's election to the position of "APC party chairmanship flag bearer in Odogbolu Local Government" did not endanger Kunkushi because there was no evidence that Diya had "either the interest or the capacity in his role within local government to arrest and harm" Kunkushi.

Second, Kunkushi has not shown that the BIA abused its discretion in declining to find that changed conditions in the treatment of the mentally ill in Nigeria would subject him to persecution if he returned. Kunkushi's 2025 motion to reopen asserted that the 2019 Report by the Human Rights Watch ("HRW")

documented the horrific treatment of the mentally ill across Nigeria. He contrasted this with the 2017 U.S. Department of State Report that was filed in advance of his initial 2018 hearing before the BIA. The BIA found that because the two reports were "practically contemporaneous," it could not find that there had been a meaningful change in the treatment of the mentally ill. Contrary to Kunkushi's contention, the BIA did not adopt a new "practically contemporary" rule but reasonably held that the 2019 HRW Report did not show a material change from the 2017 Report, which noted that mental health-care services were almost non-existent.

Third, Kunkushi has not shown that the BIA abused its discretion in not recognizing that his mental condition would subject him to persecution in Nigeria. Kunkushi presented evidence that he has been diagnosed with "PTSD and Major Depressive Disorder with psychotic features." But the medical evidence he submitted supports the BIA's determination that he "generally demonstrated good understanding, acceptance and implementation of strategies" to manage his mental condition. In addition, there is nothing in the record to suggest that on returning to Nigeria, Kunkushi would be treated similarly to the mentally incompetent wards of the state mentioned in the 2019 HRW Report.

Kunkushi's fourth argument that the combination of Diya's election, the treatment of the mentally ill in Nigeria, and his mental condition compelled a

finding that he would be persecuted in Nigeria is not persuasive. As Kunkushi has not shown that the election of Diya created a likelihood of political persecution or that his mental condition is likely to subject him to horrific conditions of confinement in Nigeria, the combination of these assertions with the poor treatment of mentally ill wards of the state in Nigeria does not create a compelling showing of future persecution.

Kunkushi's fifth assertion, that the BIA abused its discretion in failing to appreciate that he is eligible for a U visa, is also not well taken. U visas are designed to allow foreigners to remain in the country when needed to assist the government in its prosecution of a criminal. *See* 8 C.F.R. 214.14(b). Accordingly, eligibility for a U visa is not relevant to an evaluation of Kunkushi's future treatment in Nigeria. Moreover, Kunkushi has only applied for, but has not been granted, a U visa, and he offers no evidence that he is assisting with an ongoing prosecution.

Kunkushi also has not shown that the BIA abused its discretion in denying him equitable tolling. "Equitable tolling is available when 'some extraordinary circumstance stood in [the petitioner's] way and prevented timely filing,' and the petitioner acted with 'due diligence' in pursuing the petitioner's rights." *Eskilian v. Bondi*, 172 F.4th 682, 687 (9th Cir. 2026) (citation omitted). Kunkushi's alleged fear of persecution in Nigeria matured when Diya was elected as a flag bearer in

September 2024. Yet he did not file his motion to reopen until September 2025. While *Eskilian* indicates that the BIA may have had the discretion to grant equitable tolling, it does not establish that the BIA's denial of Kunkushi's request for equitable tolling constituted an abuse of discretion.

Finally, Kunkushi has not shown that the BIA erred in denying him *sua sponte* relief. The Ninth Circuit's jurisdiction to review the denial of *sua sponte* reopening is limited to determining whether the BIA based its decision on legal or constitutional error. *Bonilla v. Lynch*, 840 F.3d 575, 581 (9th Cir. 2016). Here, the BIA found that Kunkushi had "not demonstrated an exceptional circumstance that would warrant reopening *sua sponte*." The BIA recognized that Kunkushi's "citizen son may suffer some hardship due to respondent's removal," but indicated that it "lacked authority to confer equitable or humanitarian relief," noting that eligibility for a U visa "is not an equity that constitutes such a truly exceptional circumstance as to warrant discretionary reopening." Thus, while the BIA recognized that it had authority to grant discretionary relief, it denied relief for lack of a persuasive factual presentation, which is not judicially reviewable.

The petition for review is **DENIED**.