

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 23-2077

MAHESH JULKA; BHAWANA JULKA; A. J.,
Petitioners

v.

ATTORNEY GENERAL UNITED STATES OF AMERICA

On Petition for Review of a Final Order of the
Board of Immigration Appeals
(Nos. A200-176-416, A200-176-417, A200-176-418)
Immigration Judge: Michael W. Straus

Submitted Under Third Circuit L.A.R. 34.1(a) on April 11, 2024

Before: CHAGARES, *Chief Judge*, PORTER and SCIRICA, *Circuit Judges*.

(Filed: April 12, 2024)

OPINION*

PORTER, *Circuit Judge*.

Petitioners Mahesh Julka, his wife, and their son (“the Julkas”) are natives of India who entered removal proceedings in 2011 because they overstayed their temporary

* This disposition is not an opinion of the full Court and, under I.O.P. 5.7, is not binding precedent.

admission to the United States. Mahesh applied for asylum, withholding of removal, and protection under the Convention Against Torture (“CAT”), with his wife and son as derivative beneficiaries of his applications. He testified that he feared returning to India because he was a Congress Party member and would face persecution from Akali Dal Party members. The Immigration Judge denied Mahesh’s applications in 2012, finding that his testimony was not credible. For example, Mahesh claimed that during his previous residence in India, Akali Dal Party members attacked and injured him, and he provided hospital reports for incidents in 2001, 2005, and 2006. But as the Immigration Judge observed, each report stated that Mahesh had been in a “fight with boys,” not attacked by Akali Dal Party members. *See, e.g.*, A.R. 456. The Board of Immigration Appeals (“BIA”) dismissed the Julkas’ appeal in 2014, and we dismissed in part and denied in part their petition for review. *Julka v. Att’y Gen.*, 649 F. App’x 205 (3d Cir. 2016) (not precedential).

In 2021, the Julkas moved to reopen their removal proceedings under 8 U.S.C. § 1229a(c)(7)(A) to reapply for asylum, withholding of removal, and CAT protection. The BIA treated their motion as raising two bases for reopening: ineffective assistance of counsel at their removal proceedings and changed circumstances in India. The BIA denied their ineffectiveness claim as untimely because it was filed more than “90 days” after the “final administrative order of removal” was entered by the BIA in 2014. § 1229a(c)(7)(C)(i). But this time bar does not apply to changed-country-conditions claims, *see* § 1229a(c)(7)(C)(ii), so the BIA reached and denied this claim on the merits. In their motion to reopen, the Julkas alleged for the first time that Mahesh’s persecutors

in India are members of the Congress Party, not the Akali Dal Party. *See* A.R. 664 (“[A] powerful and corrupt member of the Congress Party . . . was in fact responsible for most of Mr. Julka’s troubles in India.”). They submitted a letter from Mahesh’s attorney in India, stating that the Congress Party attained power in 2017 and that its members recently threatened Mahesh. The BIA reviewed this evidence and concluded that it did not reflect “material[ly]” changed country conditions, as required under § 1229a(c)(7)(C)(ii). It held that the Julkas’ “new” evidence of persecution was related to Mahesh’s testimony that the Immigration Judge had found not credible in 2012, and it concluded that the Julkas had not rehabilitated Mahesh’s credibility. Separately, the BIA held that the evidence did not reflect “materially changed country conditions *throughout* India[,]” as opposed to materially changed personal circumstances. A.R. 5 (emphasis added). The Julkas petitioned for our review.¹

The Julkas advance two arguments that the BIA abused its discretion in denying their motion to reopen, but they fail to show that the BIA’s decision was “arbitrary, irrational, or contrary to law.” *Guo v. Ashcroft*, 386 F.3d 556, 562 (3d Cir. 2006) (quoting *Tipu v. INS*, 20 F.3d 580, 582 (3d Cir. 1994)).

First, they argue that the BIA abused its discretion by failing to consider the merits of their ineffectiveness claim. They describe this claim as “relevant” to their changed-country-conditions claim, insofar as Mahesh’s counsel’s alleged ineffectiveness caused the Immigration Judge’s adverse credibility determination. Opening Br. 29. We

¹ We have jurisdiction over their petition under 8 U.S.C. § 1252(a)(1).

have recognized that aliens may attempt to rehabilitate their credibility in support of reopening based on changed country conditions. *See, e.g., Khan v. Att’y Gen.*, 691 F.3d 488, 497 (3d Cir. 2012). Because Mahesh’s counsel’s alleged ineffectiveness is evidence that “was offered to rehabilitate” credibility, the Julkas argue that the BIA was “required” to consider it in resolving their changed-country-conditions claim. Opening Br. 29–30.

This argument fails because ineffective assistance of counsel and changed country conditions are two separate “grounds” for reopening. *See Filja v. Gonzales*, 447 F.3d 241, 255 (3d Cir. 2006). As the Julkas describe in their motion to reopen, they brought an ineffectiveness claim “[i]n *addition*” to a changed-country-conditions claim. A.R. 652 (emphasis added). A motion to reopen is subject to a time bar insofar as it is based on the former, but not insofar as it is based on the latter. *Compare* § 1229a(c)(7)(C)(i) (creating a general time bar), *with* § 1229a(c)(7)(C)(ii) (creating a narrow exception for changed-country-conditions claims). Congress could have created an exception to the time bar for ineffectiveness claims, but it has not done so. Because the Julkas’ ineffectiveness claim is time-barred without exception, the BIA properly denied this part of their motion without considering its merits, regardless of its relevance to Mahesh’s credibility.

Second, the Julkas argue that the BIA erred in applying an overly restrictive standard for “material[ly]” changed country conditions under § 1229a(c)(7)(C)(ii). They argue that the BIA erred by requiring them to show “changed country conditions *throughout* India,” not only personal threats to Mahesh’s life. A.R. 5 (emphasis added).

We need not address this argument, because the Julkas’ failure to rehabilitate Mahesh’s credibility is dispositive of their changed-country-conditions claim. “To

rehabilitate a claim that was denied based on an adverse credibility finding, a respondent *must* present previously unavailable evidence that is independent of the prior claim or refutes the validity and finality of the credibility determination in the prior proceeding.” *Matter of F-S-N-*, 28 I. & N. Dec. 1, 3 n.3 (BIA 2020) (emphasis added); *see Gebra v. Att’y Gen.*, 2023 U.S. App. LEXIS 18286, at *10 (3d Cir. 2023) (not precedential) (following and applying *F-S-N-*). The BIA found that the Julkas’ changed-country-conditions claim was “related” to the adverse credibility determination and that the Julkas had failed to rehabilitate Mahesh’s credibility. In their opening brief, the Julkas do not challenge these findings. They do not argue that their claim “is independent of the” credibility determination. *F-S-N-*, 28 I. & N. Dec. at 3 n.3. Nor do they attempt to rehabilitate Mahesh’s credibility aside from their ineffectiveness claim, which the BIA was not required to consider. Accordingly, we need not address whether the BIA applied the correct legal standard for “materially” changed country conditions, because Mahesh’s unrehabilitated credibility is a sufficient and independent ground for denying the Julkas’ claim. *See id.* at 6 (“The absence of materially changed country conditions is a separate and independent basis to deny the motion to reopen.”); *see also BDCPS, Inc. v. FCC*, 351 F.3d 1177, 1183 (D.C. Cir. 2003) (“When an agency offers multiple grounds for a decision, we will affirm the agency so long as any one of the grounds is valid[.]”).

For these reasons, we will deny the Julkas’ petition.