

U.S. COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 25-3343

XIN KAI YU,
Petitioner

v.

ATTORNEY GENERAL UNITED STATES OF AMERICA

On Petition for Review of an Order of the Board of Immigration Appeals
Immigration Judge Michael J. Creppy
No. A076-019-863

Before: SHWARTZ, CHUNG, and FISHER, *Circuit Judges*
Submitted Oct. 1, 2026; Filed Oct. 7, 2026

NONPRECEDENTIAL OPINION*

CHUNG, *Circuit Judge*. Petitioner Xin Kai Yu filed an untimely motion to reopen his removal proceedings with the Board of Immigration Appeals (the “Board”). The basis of Yu’s motion was that he had converted to Christianity and would suffer persecution if removed to China. The Board denied the motion and Yu now petitions this Court for review. We will deny the petition.

I. BACKGROUND¹

Yu is a 43-year-old native and citizen of China who entered the United States without inspection on January 23, 2000. The Government commenced removal proceedings the

* This is not an opinion of the full Court and, under I.O.P. 5.7, is not binding precedent.

¹ Because we write for the parties, we recite only the facts pertinent to our decision.

next day. Yu conceded his inadmissibility and sought asylum and withholding of removal on the basis that he feared persecution because of China's then-existing family planning policy. The Immigration Judge ("IJ") presiding over Yu's case denied relief and ordered he be removed to China. The Board summarily affirmed, and Yu did not seek judicial review.

In October 2004, Yu filed a timely motion to reopen proceedings, asserting that the Chinese government had learned of his involvement with Falun Gong, and he would be persecuted for that involvement if returned to China. The Board granted his motion and remanded the case for further consideration, but the presiding IJ denied Yu relief on August 30, 2005. In March 2007, the Board affirmed, and we denied Yu's petition for review. *Yu v. Att'y Gen.*, 290 F. App'x 460, 462–63 (3d Cir. 2008).

Yu remained in the United States, and eighteen years later, on August 1, 2025, he filed another motion to reopen his proceedings with the Board, asserting he was entitled to asylum, withholding of removal, and Convention Against Torture relief because he had converted to Christianity and would suffer persecution and torture by the Chinese government if returned there. He supported his motion with a baptismal certificate, letters from family members, and country conditions evidence from 2024–2025 describing the state of religious freedom in China. On October 31, 2025, the Board denied the motion, concluding that it was untimely and that Yu presented insufficient evidence to demonstrate that country conditions regarding China's treatment of unsanctioned Christian groups have changed. This timely petition for review followed.

II. DISCUSSION²

Aliens may file one motion to reopen within ninety days of the final administrative order of removal. 8 U.S.C. § 1229a(c)(7)(A), (C). The ninety-day bar does not apply when there are “changed country conditions arising in the country ... to which removal has been ordered, if such evidence is material and was not available and would not have been discovered or presented at the previous proceeding.” *Id.* § 1229a(c)(7)(C)(ii). Yu asserts he is entitled to relief, despite the ninety-day bar, based on changed country conditions.

“We review the denial of a motion to reopen for abuse of discretion and may reverse only if the denial is arbitrary, irrational, or contrary to law.” *Bamaca-Cifuentes v. Att’y Gen.*, 870 F.3d 108, 110 (3d Cir. 2017) (quoting *Contreras v. Att’y Gen.*, 665 F.3d 578, 583 (3d Cir. 2012)). “[IJs] and the [Board] have a duty to explicitly consider any country conditions evidence submitted by an applicant that materially bears on his claim,’ and ‘[a] similar, if not greater, duty arises in the context of motions to reopen based on changed country conditions.’” *Zheng v. Att’y Gen.*, 549 F.3d 260, 268 (3d Cir. 2008) (third alteration in original) (quoting *Guo v. Gonzalez*, 463 F.3d 109, 115 (2d Cir. 2006)). However, the Board does not have to “expressly parse or refute on the record each individual argument or piece of evidence offered by the petitioner.” *Zheng*, 549 F.3d at 268 (quoting *Wang v. BIA*, 437 F.3d 270, 275 (2d Cir.2006)).

The Board found that Yu did not present sufficient evidence concerning the treatment of unsanctioned Christian groups in China in 2005, the year when his relief application was

² The Board had jurisdiction under 8 C.F.R. § 1003.2(a). We have jurisdiction under 8 U.S.C. § 1252. *See Mata v. Lynch*, 576 U.S. 143, 147–48 (2015).

last before an IJ, to demonstrate there had been a material change in conditions since then. The Board thus denied the motion.³ We discern no abuse of discretion. Yu did not submit any country conditions evidence in his motion regarding the Chinese government's treatment of unsanctioned Christian groups as of August 2005, the date of his prior appearance before an IJ. His submitted reports and newspaper articles only document the state of religious freedom in China as it existed in the early 2020s and 2010s. To justify reopening, Yu had to offer evidence demonstrating conditions had changed since his last appearance before the IJ in 2005. 8 U.S.C. § 1229a(c)(7)(C)(ii); *see Bamaca-Cifuentes*, 870 F.3d at 112–13 (no abuse of discretion in denying motion to reopen when country conditions evidence did not detail conditions at the time of petitioner's last appearance before an IJ). He did not, thereby failing to carry his burden to show a change of conditions.

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For the reasons set forth above, we will DENY the petition for review.

³ The Board took judicial notice of the United States State Department's 2004 Country Report on Human Rights Practices in China and its 2023 International Religious Freedom Report. The Board stated that even when considering these reports, Yu did not meet his burden as the reports did not reflect that China's current treatment of unsanctioned Christian groups constituted a change in the adverse treatment already experienced by those groups since 1999. This conclusion was not an abuse of discretion. *See Pllumi v. Att'y Gen.*, 642 F.3d 155, 161 & n. 10 (3d Cir. 2011).