NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

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No. 26-1765

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MAMDOUH A. HEBISHY,
Petitioner

v.

ATTORNEY GENERAL UNITED STATES OF AMERICA

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On Petition for Review of an Order of the
Board of Immigration Appeals
(Agency No. A073-586-474)
Immigration Judge: Henry S. Dogin

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Submitted Pursuant to Third Circuit L.A.R. 34.1(a)
on November 12, 2026

Before: Before: KRAUSE, BIBAS, and NYGAARD, *Circuit Judges*

(Opinion filed: November 17, 2026)

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OPINION

PER CURIAM

Egyptian citizen Mamdouh Hebishy has filed a pro se petition for review ("PFR"), seeking to challenge a decision of the Board of Immigration Appeals ("BIA") denying his third motion to reopen his immigration proceedings. We will deny the PFR.

I.

Hebishy arrived in the United States in 1992 and stayed longer than his visitor visa permitted. The former Immigration and Naturalization Service charged him as removable on that basis. *See* 8 U.S.C. § 1227(a)(1)(B). An Immigration Judge ("IJ") found Hebishy removable as charged and denied his applications for asylum and withholding of removal. The IJ ordered Hebishy removed to Egypt. The BIA affirmed. In 2003 and 2011, the BIA rejected Hebishy's motions to reopen his removal proceedings.

In 2024, Hebishy filed a third motion to reopen, which the BIA also rejected. The BIA determined that Hebishy's motion to reopen was time- and number-barred, *see* 8 U.S.C. § 1229a(c)(7); 8 C.F.R. § 1003.2(c)(2), and that he did not establish that an exception to these limitations applied based on materially changed country conditions, *see* 8 C.F.R. § 1003.2(c)(3)(ii). The BIA also declined to reopen sua sponte. This PFR followed.

II.

As discussed below, we lack jurisdiction to review the BIA's denial of Hebishy's motion to reopen sua sponte. *See Park v. Att'y Gen.*, 846 F.3d 645, 651 (3d Cir. 2017). We otherwise have jurisdiction under 8 U.S.C. § 1252(a) to review, for abuse of discretion, the BIA's decision. *See Darby v. Att'y Gen*, 1 F.4th 151, 159 (3d Cir. 2021). We will overturn the BIA's denial of a motion to reopen only if it was "arbitrary, irrational, or contrary to law." *Abulashvili v. Att'y Gen.*, 663 F.3d 197, 202 (3d Cir. 2011).

III.

A motion to reopen must generally be filed within 90 days of the BIA's final decision, and a party may only file one. 8 U.S.C. § 1229a(c)(7)(A), (C)(i); 8 C.F.R. § 1003.2(c)(2). Hebishy's final removal order was issued in 2002, and he did not file this, his third motion to reopen, until 2024. Under the regulation, both limits are subject to an exception for motions "based on changed circumstances arising in the country of nationality or in the country to which deportation has been ordered, if such evidence is material and was not available and could not have been discovered or presented at the previous hearing." 8 C.F.R. § 1003.2(c)(3)(ii); *see also Pllumi v. Att'y Gen.*, 642 F.3d 155, 161 (3d Cir. 2011) (noting the changed-country-conditions exception to the time limit).[1]

[1] While agreeing that the time and numerical limits do not apply under the changed circumstances exception, CA No. 15 at 9–10, the Government states that the relevant statute extends the exception only to the time limit, and points us to *Matter M-M-L-J-*, in which the BIA held that the statute permits only one motion to reopen, subject to a single exception for battered spouses, children, and parents, and that equitable tolling does not apply to the number bar. 29 I. & N. Dec. 843, 845–48 (BIA 2026). As the Government also notes, the BIA expressly did not decide whether the number bar applies to motions based on changed country conditions, *id*. at 845 n.2, and we need not resolve any conflict

Hebishy argues that he provided the BIA with evidence of materially changed country conditions in Egypt for Coptic Christians. Here, the BIA did not abuse its discretion in concluding that the evidence did not show a material change post-1998. Rather, the BIA reasonably concluded that the evidence demonstrated that the conditions have persisted. *See Pllumi*, 642 F.3d at 161 (concluding that the Petitioner had not established changed country conditions when "the conditions described have persisted," even though the evidence submitted by the Petitioner was not available to him at the time of his initial removal hearing). Hebishy therefore failed to establish the exception, and the BIA did not err in denying his motion as untimely and number-barred.

Hebishy's remaining argument is that the BIA erred in refusing to reopen the case sua sponte. "Because the BIA retains unfettered discretion to decline to *sua sponte* reopen or reconsider a deportation proceeding, this court is without jurisdiction to review a decision declining to exercise such discretion to reopen or reconsider the case." *Desai v. Att'y Gen*., 695 F.3d 267, 269 (3d Cir. 2012) (internal citation and quotation marks omitted). There are two narrow exceptions to this rule: a decision to deny *sua sponte* reopening can be reviewed if it is based on an incorrect legal premise, *see id*., or if the BIA has "restricted the exercise of its discretion by establishing a 'general policy' of reopening *sua sponte*" under specific circumstances, *Cruz v. Att'y Gen*., 452 F.3d 240, 249 (3d Cir. 2006). However, while Hebishy claims the BIA relied on an incorrect legal premise, neither exception applies here. In particular, while Hebishy disagrees with the BIA's

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between the regulation and the statute. For the purpose of this opinion, we assume without deciding that the changed-country-conditions exception can excuse both limits.

assessment that exceptional circumstances were lacking, that does not mean the BIA misunderstood the legal framework it was applying. *See Pllumi*, 642 F.3d at 160.

IV.

Accordingly, the PFR will be denied.