

**UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING TO A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 8th day of January, two thousand twenty.

PRESENT:

JOHN M. WALKER, JR.,
PIERRE N. LEVAL,
JOSÉ A. CABRANES,
Circuit Judges.

HO MAI YU, AKA HE MEI YU,
Petitioner,

v.

WILLIAM P. BARR, UNITED STATES
ATTORNEY GENERAL,
Respondent.

17-2117
NAC

FOR PETITIONER:

Yee Ling Poon; Deborah
Niedermeyer, Of Counsel, Law
Office of Yee Ling Poon, New
York, NY.

FOR RESPONDENT:

Chad A. Readler, Acting Assistant
Attorney General; Keith I.
McManus, Assistant Director;
Maarja T. Luhtaru, Trial Attorney,
Office of Immigration Litigation,
United States Department of
Justice, Washington, DC.

1 UPON DUE CONSIDERATION of this petition for review of a
2 Board of Immigration Appeals ("BIA") decision, it is hereby
3 ORDERED, ADJUDGED, AND DECREED that the petition for review
4 is DENIED.

5 Petitioner Ho Mai Yu, a native and citizen of the
6 People's Republic of China, seeks review of a June 13, 2017,
7 decision of the BIA, denying her motion to reopen. *In re Ho*
8 *Mai Yu*, No. A072 485 206 (B.I.A. June 13, 2017). We assume
9 the parties' familiarity with the underlying facts and
10 procedural history in this case.

11 The applicable standards of review are well established.
12 See *Jian Hui Shao v. Mukasey*, 546 F.3d 138, 168-69 (2d Cir.
13 2008). In her motion to reopen, Yu asserted that conditions
14 for Christians had worsened in her home province of Zhejiang,
15 China excusing the untimely and number barred filing of her
16 motion and demonstrating her prima facie eligibility for
17 asylum based on her practice of Christianity.

18 It is undisputed that Yu's 2017 motion was untimely and
19 number barred because it was her second motion to reopen
20 filed more than 12 years after her exclusion order became
21 final in 2004. See 8 U.S.C. § 1229a(c)(7)(A), (C)(i);
22 8 C.F.R. § 1003.2(c)(2). However, the time and number
23 limitations for filing a motion to reopen do not apply if

1 reopening is sought to apply for asylum and the motion "is
2 based on changed country conditions arising in the country
3 of nationality or the country to which removal has been
4 ordered, if such evidence is material and was not available
5 and would not have been discovered or presented at the
6 previous proceeding." 8 U.S.C. § 1229a(c)(7)(C)(ii);
7 8 C.F.R. § 1003.2(c)(3). The BIA did not err in finding
8 that Yu failed to demonstrate such conditions.

9 "In determining whether evidence accompanying a motion
10 to reopen demonstrates a material change in country
11 conditions that would justify reopening, [the BIA] compare[s]
12 the evidence of country conditions submitted with the motion
13 to those that existed at the time of the merits hearing
14 below." *In re S-Y-G-*, 24 I. & N. Dec. 247, 253 (B.I.A. 2007).
15 As the BIA found, the evidence demonstrates that the Chinese
16 government has repressed Christians, attempted to control
17 their religious practices, and sporadically cracked down on
18 rapid religious growth since long before Yu's 1995 hearing.

19 Accordingly, because the BIA reasonably concluded that
20 Yu failed to demonstrate a material change in conditions in
21 China, it did not abuse its discretion in denying her
22 motion as untimely and number barred. See 8 U.S.C.
23 § 1229a(c)(7)(A), (C). Because the denial as untimely and

1 number barred is dispositive, we do not reach the BIA's
2 alternative basis for denying Yu's motion—her failure to
3 establish her prima facie eligibility for relief. See *INS*
4 *v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("As a general rule
5 courts and agencies are not required to make findings on
6 issues the decision of which is unnecessary to the results
7 they reach.").

8 For the foregoing reasons, the petition for review is
9 DENIED. As we have completed our review, any stay of removal
10 that the Court previously granted in this petition is VACATED,
11 and any pending motion for a stay of removal in this petition
12 is DISMISSED as moot. Any pending request for oral argument
13 in this petition is DENIED in accordance with Federal Rule of
14 Appellate Procedure 34(a)(2), and Second Circuit Local Rule
15 34.1(b).

16 FOR THE COURT:
17 Catherine O'Hagan Wolfe
18 Clerk of Court
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