

**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 9th day of March, two thousand twenty.

PRESENT:

PIERRE N. LEVAL,
DEBRA ANN LIVINGSTON,
STEVEN J. MENASHI,
Circuit Judges.

MOHAMMAD TANVEER,
Petitioner,

v.

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

**18-2379
NAC**

FOR PETITIONER: H. Raymond Fasano, Esq., New
York, NY.

FOR RESPONDENT: Joseph H. Hunt, Assistant Attorney
General; Mary Jane Candaux,
Assistant Director; Remi Da Rocha-
Afodu, Trial Attorney, Office of

1 Immigration Litigation, United
2 States Department of Justice,
3 Washington, DC.

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

8 Petitioner Mohammad Tanveer, a native and citizen of
9 Pakistan, seeks review of an August 7, 2018, decision of the
10 BIA affirming a February 13, 2018, decision of an Immigration
11 Judge ("IJ") denying Tanveer's motion to reopen. *In re*
12 *Mohammad Tanveer*, No. A 073 039 250 (B.I.A. Aug. 7, 2018),
13 *aff'g* No. A 073 039 250 (Immig. Ct. N.Y. City Feb. 13, 2018).
14 We assume the parties' familiarity with the underlying facts
15 and procedural history.

16 Under the circumstances of this case, we have reviewed
17 the IJ's decision as supplemented by the BIA. *See Yan Chen*
18 *v. Gonzales*, 417 F.3d 268, 271 (2d Cir. 2005). As an initial
19 matter, Tanveer does not challenge the agency's denial of sua
20 sponte reopening and has therefore waived review of that
21 issue. *See Yueqing Zhang v. Gonzales*, 426 F.3d 540, 541 n.1,
22 545 n.7 (2d Cir. 2005) (petitioner abandons issues and claims
23 not raised in his brief). And regardless of waiver, this
24 Court generally lacks jurisdiction to review the agency's

1 “entirely discretionary” decision declining to reopen sua
2 sponte. *Ali v. Gonzales*, 448 F.3d 515, 518 (2d Cir. 2006);
3 see also *Sumbundu v. Holder*, 602 F.3d 47, 55 (2d Cir. 2010)
4 (“[T]he decision of the BIA whether to invoke its sua sponte
5 authority is committed to its unfettered discretion [and is]
6 not subject to judicial review.”) (internal quotation marks
7 omitted).

8 As to Tanveer’s motion to reopen, we review the agency’s
9 denial of the motion for abuse of discretion but review any
10 finding regarding changed country conditions for substantial
11 evidence. *Jian Hui Shao v. Mukasey*, 546 F.3d 138, 168–69 (2d
12 Cir. 2008). “An abuse of discretion may be found in those
13 circumstances where the [BIA’s] decision provides no rational
14 explanation, inexplicably departs from established policies,
15 is devoid of any reasoning, or contains only summary or
16 conclusory statements; that is to say, where the [BIA] has
17 acted in an arbitrary or capricious manner.” *Ke Zhen Zhao*
18 *v. U.S. Dep’t of Justice*, 265 F.3d 83, 93 (2d Cir. 2001)
19 (internal citations omitted).

20 An alien seeking to reopen proceedings may file only one
21 motion to reopen no later than 90 days after the date on which
22 the final administrative decision was rendered. 8 U.S.C.
23 § 1229a(c)(7)(A), (C)(i); 8 C.F.R. §§ 1003.2(c)(2),

1 1003.23(b)(1). Tanveer's November 2017 motion to reopen was
2 untimely because he filed it 19 years after the IJ ordered
3 him removed in March 1998. However, the time limitation for
4 filing a motion to reopen does not apply if reopening is
5 sought to apply for asylum "based on changed country
6 conditions arising in the country of nationality or the
7 country to which removal has been ordered, if such evidence
8 is material and was not available and would not have been
9 discovered or presented at the previous proceeding."
10 8 U.S.C. § 1229a(c)(7)(C)(ii); see also 8 C.F.R. §§
11 1003.2(c)(3)(ii), 1003.23(b)(4)(i). An alien seeking
12 reopening must also establish prima facie eligibility for the
13 relief sought. *Poradisova v. Gonzales*, 420 F.3d 70, 78 (2d
14 Cir. 2005). The agency did not abuse its discretion in
15 denying reopening.

16 The agency reasonably determined that Tanveer failed to
17 establish a change in country conditions to excuse his
18 untimely motion. Tanveer argues primarily on appeal that he
19 has been and will be perceived to be an Ahmadiyya Muslim, and
20 that he demonstrated worsening conditions for Ahmadis in
21 Pakistan. "In determining whether evidence accompanying a
22 motion to reopen demonstrates a material change in country
23 conditions that would justify reopening, [the agency]

1 compare[s] the evidence of country conditions submitted with
2 the motion to those that existed at the time of the merits
3 hearing below." *In re S-Y-G-*, 24 I. & N. Dec. 247, 253 (BIA
4 2007).

5 To support his claim, Tanveer submitted the 2016 U.S.
6 State Department's Human Rights Reports for Pakistan and the
7 2017 Human Rights Watch Report for Pakistan. But beyond his
8 own statements that he experienced harm in Pakistan as a
9 perceived Ahmadi, he did not submit as a comparison any
10 substantive evidence of conditions before 1998, when the IJ
11 ordered him removed in absentia. See *In re S-Y-G-*, 24 I. &
12 N. Dec. at 253. And while the two reports he submitted detail
13 harsh conditions for Ahmadis, they do not demonstrate
14 materially changed conditions for them. We acknowledge that
15 the State Department Report noted that Ahmadi representatives
16 described a government raid on an Ahmadi center as
17 "unprecedented" and therefore "indicative of worsening
18 conditions for the community in Pakistan," but that
19 characterization by Ahmadis, without more, is insufficient to
20 demonstrate that the persecution of Ahmadis has worsened
21 since before Tanveer's 1998 hearing at which he failed to
22 appear. The reports otherwise indicate that persecution of
23 religious minorities has been an ongoing issue for an

1 indefinite period of time, stating that religious
2 discrimination "continued," there were "improvements" in
3 police protection and treatment of religious minorities, and
4 the government's encouragement of Ahmadi discrimination was
5 a continuation of previous behavior. Therefore, based on
6 this record, the agency did not abuse its discretion in
7 determining that Tanveer failed to establish a material
8 change in conditions for Ahmadis to warrant reopening. See
9 8 U.S.C. § 1229a(c)(7)(C).

10 To the extent that Tanveer argues that the BIA overlooked
11 his evidence, he is incorrect; the BIA explicitly noted and
12 considered the two reports he submitted. See *Jian Hui Shao*,
13 546 F.3d at 169 (agency is required to "consider relevant
14 evidence of country conditions[,]" but need not "expressly
15 parse or refute on the record each individual argument or
16 piece of evidence" (internal quotation marks omitted)).

17 Tanveer argues that the IJ never made an explicit finding
18 that he did not demonstrate changed country conditions
19 because the IJ wrote "changed circumstances," rather than
20 "changed conditions." The motion to reopen statute uses the
21 phrase "changed country conditions arising in the country of
22 nationality or the country to which removal has been ordered
23," 8 U.S.C. § 1229a(c)(7)(C)(ii), but the implementing

1 regulations for the BIA use the phrase “changed *circumstances*
2 arising in the country of nationality or in the country to
3 which deportation has been ordered” 8 C.F.R. §
4 1003.2(c)(3)(ii) (emphasis added). Moreover, there is
5 nothing in the IJ’s decision indicating that he denied the
6 motion for a failure to show changed *personal* circumstances,
7 nor did Tanveer argue changed personal circumstances to the
8 IJ or BIA. And in his notice of appeal, Tanveer himself used
9 the term “change in circumstances” in an apparent attempt to
10 refer to changed country conditions. Regardless, we have
11 held that changes in personal circumstances do not excuse the
12 applicable time limitation. See *Li Yong Zheng v. U.S. Dep’t*
13 *of Justice*, 416 F.3d 129, 130–31 (2d Cir. 2005); see also *Wei*
14 *Guang Wang v. BIA*, 437 F.3d 270, 274 (2d Cir. 2006) (“The law
15 is clear that a petitioner must show changed country
16 conditions in order to exceed the 90-day filing requirement
17 for seeking to reopen removal proceedings. A self-induced
18 change in personal circumstances cannot suffice.” (internal
19 citation omitted)).

20 Finally, Tanveer argues that events after the BIA’s
21 decision—an August 2018 political regime change, in which his
22 former political party lost control of the government—
23 demonstrate changed country conditions that warrant

1 reopening. But Tanveer submits no evidence to support this
2 claim, and even if there has been a change, the materiality
3 and frequency of the shift in political control is unclear
4 given regime changes in the past.

5 For the foregoing reasons, the petition for review is
6 DENIED. All pending motions and applications are DENIED and
7 stays VACATED.

8 FOR THE COURT:
9 Catherine O'Hagan Wolfe,
10 Clerk of Court