

**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 10th day of April, two thousand twenty.

PRESENT:

DENNIS JACOBS,
DEBRA ANN LIVINGSTON,
SUSAN L. CARNEY,
Circuit Judges.

HAMINDER SINGH,
Petitioner,

v.

No. 19-686
NAC

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

FOR PETITIONER: Gary J. Yerman, Esq., New York, NY.

FOR RESPONDENT: Joseph H. Hunt, Assistant Attorney General; Cindy S. Ferrier, Assistant Director; Surell Brady, 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 Haminder Singh, a native and citizen of India,
6 seeks review of a 2019 decision of the BIA denying Singh's
7 motion to reconsider and reopen. *In re Haminder Singh*, No. A
8 073 531 048 (B.I.A. Feb. 28, 2019). We assume the parties'
9 familiarity with the underlying facts and procedural history.

10 The current petition is timely only as to the BIA's 2019
11 decision denying reconsideration and reopening; our review is
12 thus limited to that decision. See *Ke Zhen Zhao v. U.S. Dep't*
13 *of Justice*, 265 F.3d 83, 89–90 (2d Cir. 2001) (explaining
14 that separate petitions for review must be timely filed from
15 the final order of removal and any subsequent denial of
16 reopening). Further, Singh has waived any challenge to the
17 BIA's denial of reconsideration by not addressing the BIA's
18 determination that he did not show a legal or factual error
19 in its May 2018 decision. See *Yueqing Zhang v. Gonzales*, 426
20 F.3d 540, 541 n.1, 545 n.7 (2d Cir. 2005) (petitioner abandons
21 issues and claims not raised in his brief). Accordingly, the
22 only decision on review before us now is the BIA's 2019 denial

1 of reopening.

2 We review the BIA's denial of a motion to reopen "for
3 abuse of discretion, mindful that motions to reopen are
4 disfavored." *Ali v. Gonzales*, 448 F.3d 515, 517 (2d Cir. 2006)
5 (internal quotation marks omitted). When the BIA considers
6 evidence of country conditions in evaluating a motion to
7 reopen, we review the BIA's factual findings under the
8 substantial evidence standard. *Jian Hui Shao v. Mukasey*, 546
9 F.3d 138, 169 (2d Cir. 2008).

10 An alien ordinarily must move to reopen no later than 90
11 days after entry of the final administrative decision.
12 See 8 C.F.R. § 1003.2(c)(2). But this time limitation does
13 not apply if the motion is filed to apply for asylum "based
14 on changed circumstances arising in the country of
15 nationality or in the country to which deportation has been
16 ordered, if such evidence is material and was not available
17 and could not have been discovered or presented at the
18 previous hearing." *Id.* § 1003.2(c)(3). "In determining
19 whether evidence accompanying a motion to reopen demonstrates
20 a material change in country conditions that would justify
21 reopening, [the agency] compare[s] the evidence of country
22 conditions submitted with the motion to those that existed at

1 the time of the merits hearing below." *In re S-Y-G-*, 24 I. &
2 N. Dec. 247, 253 (BIA 2007). We concluded that the BIA did
3 not abuse its discretion in denying reopening because, as
4 discussed below, Singh's evidence did not establish a change
5 in conditions or that any change was material to his asylum
6 claim.

7 Substantial evidence supports the BIA's conclusion that
8 the evidence was insufficient to establish a change in
9 conditions occurring since Singh's 1996 hearing.
10 See 8 C.F.R. § 1003.2(c)(3)(ii); *In re S-Y-G-*, 24 I. & N.
11 Dec. at 253. The documents Singh submitted with his motion do
12 not discuss country conditions in India and do not establish
13 a change in the relevant period. *In re S-Y-G-*, 24 I. & N.
14 Dec. at 253. Singh's motion argued that conditions have
15 worsened, citing in support of his argument a Human Rights
16 Watch report and an online article stating that a Sikh
17 activist from Scotland had been arrested upon his return to
18 India. But the quoted portion of the Human Rights Watch report
19 does not provide specific information about Sikhs, and Singh
20 did not provide information about the reliability of the
21 source on which the online article relied.

22 Singh asks this Court to take judicial notice of a U.S.

1 Commission on International Religious Freedom Report, but we
2 are limited to “the administrative record on which the order
3 of removal is based.” 8 U.S.C. § 1252(b)(4)(A). Further, the
4 BIA was not required to consider the country conditions
5 evidence submitted with Singh’s prior motion to reopen,
6 because it had previously considered this evidence when it
7 denied reopening in May 2018. As noted, that decision is not
8 before this Court. See *Ke Zhen Zhao*, 265 F.3d at 89–90.
9 Accordingly, the BIA did not err in finding no material
10 change.

11 Nor did the BIA abuse its discretion in denying Singh’s
12 motion to reopen based on his failure to overcome the IJ’s
13 underlying adverse credibility determination with regard to
14 Singh. See *Kaur v. BIA*, 413 F.3d 232, 234 (2d Cir. 2005)
15 (finding no abuse of discretion in BIA’s denial of motion to
16 reopen when it “clearly explained that the evidence submitted
17 by petitioner in support of her motion was not ‘material’
18 because it did not rebut the adverse credibility finding that
19 provided the basis for the [immigration judge’s] denial of
20 petitioner’s underlying asylum application”). The card
21 purportedly showing that Singh is a member of Youth Akali Dal
22 Amritsar USA, Inc., did not remedy the defects in Singh’s

1 original claim because the card was issued in June 2018, after
2 the BIA's denial of his previous motion to reopen. Thus, the
3 2018 card did not corroborate that he engaged in relevant
4 political activities at the time of his original or 2017
5 asylum application.

6 The BIA also did not abuse its discretion by not
7 crediting a letter from the Sikh Cultural Society, Inc.,
8 because that letter was prepared after the BIA's denial of
9 Singh's previous motion to reopen and, in any event, was
10 lacking in detail. See *Qin Wen Zheng v. Gonzales*, 500 F.3d
11 143, 147-48 (2d Cir. 2007) (holding that BIA may decline to
12 credit documentary evidence submitted in support of a motion
13 to reopen based on legitimate concerns, which may stem from
14 immigration judge's prior adverse credibility determination,
15 about petitioner's credibility). Accordingly, the BIA could
16 reasonably determine that any evidence of increased
17 persecution of Sikh political activists or Sikh practitioners
18 was not material because Singh did not rebut the adverse
19 credibility determination. See *Kaur*, 413 F.3d at 234. Because
20 the BIA did not abuse its discretion in determining that Singh
21 did not show a material change in conditions in India, it did
22 not err in denying Singh's motion as untimely and number

1 barred. See *Ali*, 448 F.3d at 517.

2 For the foregoing reasons, the petition for review is
3 DENIED. Singh's stay motion and the Government's motion to
4 expedite are DENIED as moot.

5 FOR THE COURT:
6 Catherine O'Hagan Wolfe,
7 Clerk of Court