

**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 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 17th day of December, two thousand twenty-four.

PRESENT:

GUIDO CALABRESI,
WILLIAM J. NARDINI,
BETH ROBINSON,
Circuit Judges.

STANLEY PIERRE,
Petitioner,

v.

MERRICK B. GARLAND, UNITED
STATES ATTORNEY GENERAL,
Respondent.

24-355
NAC

FOR PETITIONER:

Craig Relles, Relles Law, PLLC, White Plains,
NY.

1 **FOR RESPONDENT:**

Brian Boynton, Principal Deputy Assistant
Attorney General; Julie M. Iversen, Anna
Juarez, Senior Litigation Counsel, Office of
Immigration Litigation, United States
Department of Justice, Washington, DC.

6 UPON DUE CONSIDERATION of this petition for review of a Board of
7 Immigration Appeals (“BIA”) decision, it is hereby ORDERED, ADJUDGED, AND
8 DECREED that the petition for review is GRANTED and the case is remanded to
9 the BIA.

10 Petitioner Stanley Pierre, a native and citizen of Haiti, seeks review of a
11 January 18, 2024, decision of the BIA denying his motion to reopen to apply for
12 protection under the Convention Against Torture (“CAT”). *In re Stanley Pierre*,
13 No. A059 579 627 (B.I.A. Jan. 18, 2024). We assume the parties’ familiarity with
14 the underlying facts and procedural history.

15 We review the BIA’s denial of a motion to reopen for abuse of discretion, *Ali*
16 *v. Gonzales*, 448 F.3d 515, 517 (2d Cir. 2006), and review country conditions
17 determinations for substantial evidence, *Shao v. Mukasey*, 546 F.3d 138, 168–69 (2d
18 Cir. 2008).

19 It is undisputed that Pierre’s August 2023 motion to reopen was untimely,
20 filed more than 90 days after his removal order became final in September 2022.

1 See 8 U.S.C. § 1229a(c)(7)(C)(i) (setting 90-day deadline); 8 C.F.R. § 1003.2(c)(2)
2 (same). There is an exception to the time limit, however, if the motion is filed to
3 apply for relief “based on changed country conditions arising in the country of
4 nationality or the country to which removal has been ordered, if such evidence is
5 material and was not available and would not have been discovered or presented
6 at the previous proceedings.” 8 U.S.C. § 1229a(c)(7)(C)(ii); see also 8 C.F.R.
7 § 1003.2(c)(3)(ii). “When reviewing whether . . . evidence established changed
8 country conditions, the BIA must ‘compare the evidence of country conditions
9 submitted with the motion to those that existed at the time of the merits hearing
10 below.’” *Tanusantoso v. Barr*, 962 F.3d 694, 698 (2d Cir. 2020) (quoting *In re S-Y-*
11 *G-*, 24 I. & N. Dec. 247, 253 (B.I.A. 2007)).

12 “While the BIA must consider [country conditions evidence], it may do so
13 in summary fashion without a reviewing court presuming that it has abused its
14 discretion,” and is not required to “expressly parse or refute on the record each
15 individual . . . piece of evidence offered by the petitioner” so long as it has “has
16 given reasoned consideration to the petition, and made adequate findings.”
17 *Wang v. BIA*, 437 F.3d 270, 275 (2d Cir. 2006) (quotation marks omitted).
18 However, “[d]espite our generally deferential review of . . . BIA opinions, we

1 require a certain minimum level of analysis from the . . . BIA . . . if judicial review
2 is to be meaningful.” *Poradisova v. Gonzales*, 420 F.3d 70, 77 (2d Cir. 2005). “[W]e
3 cannot assume that the BIA considered factors that it failed to mention in its
4 decision.” *Anderson v. McElroy*, 953 F.2d 803, 806 (2d Cir. 1992) (quotation marks
5 omitted).

6 The BIA did not sufficiently explain its conclusion that Pierre failed to
7 establish a material change in conditions in Haiti or state a prima facie CAT claim.
8 The BIA concluded that Pierre had “not persuasively explained how the newly
9 proffered evidence constitutes materially changed conditions arising in Haiti that
10 affect his individual claim for CAT protection.” Based on Pierre’s original
11 evidence, the IJ found that deportees were being detained for “at least hours” for
12 police “to obtain information on the deportee for continued monitoring, and thus
13 concluded that “[b]rief detention upon arrival . . . d[id] not amount to torture.”
14 That original evidence reflected that Haiti had stopped routine detention of all
15 deportees, but all criminal deportees were held for at least a few hours and some
16 “for weeks” to obtain sufficient information to monitor them.

17 With his motion to reopen, Pierre presented evidence that the Haitian
18 government had begun detaining criminal deportees indefinitely and extorting

1 their family members and friends to secure their release, and he asserted that
2 detainees were being tortured while detained. He attached multiple news articles
3 from 2022 about instances of Haitians being deported from the United States and
4 immediately imprisoned, with police sometimes demanding payments from their
5 families to secure their release.

6 In denying Pierre's motion, the BIA concluded that the evidence he
7 originally submitted before the IJ "similarly reflect[ed] increasingly poor
8 conditions in Haitian prisons." The BIA therefore found that the new evidence
9 showed only "a continuation of the same" conditions in Haiti or changes that were
10 not material to Pierre's CAT claim. The record supports the BIA's conclusion that
11 the new evidence reflects similarly deplorable conditions of confinement as at the
12 time of his hearing, and that those conditions were a result of a lack of resources
13 rather than an intent to torture. *See Pierre v. Gonzales*, 502 F.3d 109, 121 (2d Cir.
14 2007) ("The failure to maintain standards of diet, hygiene, and living space in
15 prison does not constitute torture under the CAT unless the deficits are sufficiently
16 extreme and are inflicted . . . intentionally rather than as a result of poverty,
17 neglect, or incompetence.").

18 However, the BIA did not discuss the new evidence of indefinite

1 imprisonment of deportees as compared to the IJ's original finding of just hours of
2 detention, or the extortion of friends and family members of detainees to secure
3 their release. We remand for the BIA to address this evidence in the first instance
4 to determine whether it shows a change in conditions material to Pierre's CAT
5 claim. See *Poradisova*, 420 F.3d at 77. Without some acknowledgement or
6 discussion of Pierre's new evidence about the length of detention and extortion,
7 we cannot determine whether the BIA considered these changes or whether it
8 erred in finding no change material to a CAT claim or in concluding that Pierre
9 had not stated a prima facie claim for CAT relief. Torture includes "any act by
10 which severe pain or suffering, whether physical or mental, is intentionally
11 inflicted on a person for such purposes as . . . *intimidating or coercing him or her or a*
12 *third person* . . . when such pain or suffering is inflicted by, or at the instigation of,
13 or with the consent or acquiescence of, a public official acting in an official capacity
14 or other person acting in an official capacity." 8 C.F.R. § 1208.18(a)(1) (emphasis
15 added). The BIA should address the relevance of Pierre's new evidence to the
16 issue of intent to torture, that is, whether officials are illegally and indefinitely
17 detaining deportees in those conditions in order to coerce their families to pay for
18 their release.

1 For the foregoing reasons, the petition for review is GRANTED and the case
2 is REMANDED to the BIA. All pending motions and applications are DENIED
3 and stays VACATED.

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