

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

August 26, 2026

FOR THE TENTH CIRCUIT

Christopher M. Wolpert
Clerk of Court

MOREES MURQUS HARMEZ,

Petitioner,

v.

TODD BLANCHE, United States Attorney
General,

Respondent.

No. 25-9546
(Petition for Review)

ORDER AND JUDGMENT*

Before **EID, KELLY**, and **CARSON**, Circuit Judges.**

Once an immigration judge issues a final order of removal, an alien may file one motion to reopen within ninety days of the date on which the immigration judge made the final administrative decision. An exception to the filing deadline exists where the alien provides new and material evidence of changed country conditions in his country of removal.

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

** After examining the briefs and appellate record, this panel has determined unanimously to honor the parties' request for a decision on the briefs without oral argument. See Fed. R. App. P. 34(f); 10th Cir. R. 34.1(G). The case is therefore submitted without oral argument.

Here, the Board of Immigration Appeals (“BIA”) denied Petitioner Morees Murqus Harmez’s fifth motion to reopen because he failed to establish a material change in country conditions that would excuse his untimely and successive motion. The BIA affirmed and alternatively denied the motion because Petitioner failed to demonstrate prima facie eligibility for Convention Against Torture (“CAT”) protection. Exercising jurisdiction under 8 U.S.C. § 1252(a)(1), we deny his petition for review.

I.

Petitioner Morees Harmez left Iraq and entered the United States as a child of a refugee. The United States granted Petitioner lawful permanent resident status. Seven years later, Petitioner pleaded guilty to a third-degree felony drug offense in Utah state court. The United States charged him as removable under 8 U.S.C. § 1227(a)(2)(A)(iii) because of his felony conviction. In October 2016, Petitioner appeared before an immigration judge pro se and admitted the factual allegations against him. The immigration judge advised Petitioner that CAT could protect him if he showed that it was more likely than not that someone in Iraq would torture him based on his religion with the instigation, consent, or acquiescence of an Iraqi official. Although he feared torture upon his return to Iraq, Petitioner said he had no witnesses or evidence. The immigration judge explained the evidentiary process to Petitioner and offered a continuance so he could prepare a CAT application. Petitioner said he did not want to apply. So the immigration judge found him removable as charged and ordered him removed.

Petitioner filed four motions to reopen between 2017 and 2021. The first motion sought reopening based on a change of Iraq's country conditions. Represented by counsel, Petitioner said his Christian religion put him at risk of persecution or torture. Petitioner submitted a 2016 United States Department of State Human Rights Report for Iraq, which discussed the killing of Christians. The immigration judge denied the first motion to reopen as untimely under 8 U.S.C. § 1229(a)(7)(C). The immigration judge concluded that Petitioner did not satisfy the requirements for excusing the deadline under 8 U.S.C. § 1229a(c)(7)(C) because he failed to present previously unavailable evidence that demonstrated a material change in country conditions. Although the Department of State published the 2016 Report after Petitioner's prior hearing, it described conditions that existed in Iraq at or before that time. The BIA affirmed the immigration judge, finding that the evidence did not show that conditions for Iraqi Christians materially changed between the date of his removal hearing and his motion to reopen. Petitioner did not file a petition to review that decision.

Petitioner's second and third motions to reopen related to his removability as an aggravated felon. The BIA denied both motions, and Petitioner did not seek review of either decision.

In March 2021, Petitioner filed his fourth motion to reopen—again claiming Iraq's country conditions materially changed since the time of his first motion to reopen. The BIA denied the fourth motion as untimely and successive, concluding that Petitioner's evidence was not new and did not prove that Iraq's country

conditions materially worsened since he filed the first motion to reopen. The BIA also denied reopening on the basis that Petitioner had not made a prima facie showing that he was eligible for CAT protections. He sought review of that order.

In March 2023, we affirmed the BIA. Harmez v. Garland, 2023 WL 2706678 (10th Cir. Mar. 30, 2023) (unpublished). In that appeal, Petitioner first claimed that the BIA failed to properly consider his evidence and erred in concluding that the evidence did not show a material change in country conditions that warranted excusing him from the filing deadline. Id. at *4. We rejected this argument, noting that evidence that Christian and Americanized Iraqis continuing to be mistreated did not establish that their plight was significantly worse than during the ISIS occupation. Id. We noted the BIA gave a rational explanation for its ruling and substantial evidence supported its finding that the evidence did not show the type of change needed to excuse the deadline for reopening. Id. Second, Petitioner challenged the BIA's CAT ruling. Id. at *5. We held that the BIA acted within its discretion when it concluded that the same evidence did not show a prima facie case of eligibility for CAT protection. Id.

Then, in November 2024, Petitioner moved the Third District Court of Salt Lake County, Utah for a reduction of his felony conviction to a lesser charge. The state court granted the motion and reduced the charge to a misdemeanor. In January 2025, Petitioner filed a fifth motion to reopen with the BIA based on a change in law regarding his crime of removability and based on a change in Iraq's country conditions. The BIA denied the motion. It concluded that equitable tolling of the

time bar did not apply in this case because Petitioner did not establish that he acted with the requisite diligence. Furthermore, the BIA reasoned that Petitioner did not show that his conviction is no longer valid for immigration purposes. The BIA also rejected Petitioner's alternative argument based on a change in Iraq's country conditions. Again, the BIA concluded that Petitioner's evidence reflected a continuation of the ongoing circumstances that gave rise to his first motion to reopen rather than a material change in conditions. Finally, the BIA determined that Petitioner did not establish his prima facie eligibility for CAT protection because he did not set forth sufficient evidence to demonstrate a reasonable likelihood that he would face a particularized risk of torture in Iraq.

Petitioner appealed.

II.

Petitioner raises three issues: (1) whether the BIA abused its discretion when it found that Petitioner did not demonstrate a material change in Iraq's country conditions to warrant reopening of removal proceedings to apply for protection under CAT; (2) whether the evidence Petitioner submitted shows a material change in Iraq's country conditions since 2016; and (3) whether Petitioner demonstrated a prima facie case for CAT protection on the basis of his Christian religion and residence in the United States.

We address each issue in turn, noting that we review the BIA's denial of a motion to reopen for abuse of discretion. Infanzon v. Ashcroft, 386 F.3d 1359, 1362 (10th Cir. 2004) (quoting Gurung v. Ashcroft, 371 F.3d 718, 720–21 (10th Cir. 2004)).

The BIA “abuses its discretion when its decision provides no rational explanation, inexplicably departs from established polies, is devoid of any reasoning, or contains only summary or conclusory statements.” Id. The BIA may also abuse its discretion by “[c]ommitting a legal error or making a factual finding that is not supported by substantial record evidence.” Qiu v. Sessions, 870 F.3d 1200, 1202 (10th Cir. 2017) (quoting Elzour v. Ashcroft, 378 F.3d 1143, 1150 n.9 (10th Cir. 2004)).

The petitioner bears a “heavy burden” to show the BIA abused its discretion because we disfavor motions to reopen. Maatougui v. Holder, 738 F.3d 1230, 1239 (10th Cir. 2013) (quoting INS v. Abudu, 485 U.S. 94, 110 (1988)). The burden is heavy because motions to reopen threaten the strong public interest in finality of removal orders. See id. (quoting Abudu, 485 U.S. at 108).

Generally, an alien gets to file one motion to reopen within ninety days of the final removal order. 8 U.S.C. § 1229a(c)(7)(A), (C). This ninety-day deadline, however, does not apply to motions to reopen proceedings to apply for CAT protection where changed circumstance arise in the country of nationality or the country to which the executive has ordered deportation if the evidence is material and was not available, and the petitioner could not have discovered it or presented it at the previous hearing. Id.

We take up the first two issues and conclude that the BIA did not abuse its discretion when it found that Petitioner did not demonstrate a material change in Iraq’s country conditions to warrant reopening of removal proceedings to apply for

protection under CAT and that the evidence Petitioner submitted does not present a material change in Iraq's country conditions since 2017.

To the extent that Petitioner asserts the conditions in Iraq have changed materially since the time of his merits hearing in 2016, Petitioner cannot complain that the BIA did not compare his current evidence to evidence available at the time of the hearing. As we have said previously, this is so because the immigration judge offered to continue the 2016 hearing so that Petitioner could gather evidence to support a CAT claim—an offer which he declined. Harmez, 2023 WL 2706678 at *4.

With his fifth motion to reopen, Petitioner submitted the following evidence: (1) a 2023 United States House of Representatives Resolution affirming the nature and importance of the support of the religious and ethnic minority survivors of the violence ISIS enacted in 2016 and 2017; (2) Professor of Anthropology and Near Eastern Studies Dr. Tareq A. Ramadan's declaration; and (3) an Institute for the Study of War article providing a history of the Popular Mobilization Forces ("PMF"). The BIA correctly compared the new evidence to the evidence Petitioner submitted in June 2017. The evidence shows that conditions for Christians in Iraq are bad. But the record does not establish that the country's conditions have changed materially between 2017 and now. To be sure, the evidence shows that Iraqi Christians continue to face risk of detention and torture. But the relevant inquiry is whether country conditions materially changed after Petitioner filed his first motion to reopen in 2017. The BIA did not abuse its discretion when it determined that Petitioner did not make

such a showing because his evidence established only a *continuation* of bad conditions not a material change in conditions. Take for example Dr. Ramadan’s report, which uses language of a perpetuation of bad conditions. He says that over the past two decades, Christians have endured persecution and attacks. Moreover, he discusses militias who continue to oppress Iraqi Christians, the PMF who continues to target Christians, and that groups continue to intimidate Christians in the region. Indeed, the Sixth Circuit, in examining a declaration from Dr. Ramadan said that the declaration did not explain how the treatment of Christians in Iraq has changed. Zakariya v. Bondi, 2025 WL 1672370, *2 (6th Cir. June 13, 2025) (unpublished). Rather, it “describe[d] continued issues that Christians have endured in Iraq since 2014.” Id. That violence against Christians in Iraq *continues* does not prove a material change in conditions. Id.

Evidence regarding “Americanized individuals” is much the same. Ramadan’s report demonstrates that anti-Americanism emerged with the United States’s military conflicts with Iraq—the 1991 Gulf War, the 2003 Iraq War, and the occupation of Iraq between 2003 and 2011. Dr. Ramadan explained in his report that Iraqis feared being perceived as pro-American in 2010 in Iraq. The evidence does not show that anti-Americanism worsened between 2017 and 2025.

Petitioner also claims that PMF’s emergence as a state actor after his first motion to reopen is a material change that the BIA failed to consider. But such a claim does not align with the evidence that Petitioner presented. Instead, the evidence shows that the PMF was an Iraqi state actor at the time of Petitioner’s first

motion to reopen in 2017. The 2016 Department of State Report described the PMF as a state-sponsored organization operating under the Iraqi Prime Minister's inconsistent and ineffective "command and control."

Moreover, Petitioner's evidence shows that PMF's actions did not materially change after he filed his first motion to reopen. The 2016 Department of State Report details how PMF was responsible for "killing, torturing, kidnapping, and extorting civilians." The evidence Petitioner provided the BIA in 2025 details many of the same actions. The evidence shows that PMF still engages in "demographic engineering, arbitrary arrests, detainments, abductions, mass killings, and assassinations." Dr. Ramadan explained that Christians have endured discriminatory legislation, mass killings, and the demographic engineering of their neighborhoods for more than two decades. He likewise reported that "PMF continued to target Christians" in 2023 and that the staunchly anti-American sentiment associated with PMF made pro-Western and pro-American people afraid in 2010, and, that ten years later, "the same sentiments were further reported." Thus, the BIA did not err in concluding that Petitioner's evidence failed to show a material change in country conditions.

Because Petitioner did not make the requisite showing that country conditions materially changed, the BIA did not abuse its discretion in concluding the law procedurally barred his motion.

Turning to CAT protections, an applicant must show that "it is more likely than not that he or she would be tortured if removed to the proposed country of

removal.” 8 C.F.R. § 1208.16(c)(2). Human rights violations evidence is undoubtedly relevant. 8 C.F.R. § 1208.16(c)(3)(iii). But such evidence does not constitute “sufficient grounds for determining that a particular person would be in danger of being subjected to torture upon his return to that country.” In re J-E-, 23 I. & N. Dec. 291, 303 (B.I.A. 2002) (en banc), overruled on other grounds by Azanor v. Ashcroft, 364 F.3d 1013 (9th Cir. 2004). “Specific grounds must exist that indicate the individual would be personally at risk.” Id.

The BIA acted within its discretion in concluding that the same evidence did not show a prima facie case of eligibility for CAT protection. It found that the evidence reflected that the PMF generally commits gross human rights violations, including torture, and that Christians remain at high risk of persecution in Iraq. But it said, “the evidence does not reflect a reasonable likelihood that [Petitioner] can show that anyone would specifically intend to inflict severe pain or suffering on him.” Because the BIA found Petitioner did not demonstrate that he is personally at risk of torture, the BIA held that he failed to make a prima facie case of his eligibility for relief under CAT. Substantial evidence supports the BIA’s finding and it gave a reasonable explanation for its ruling.

Finally, Petitioner asks us to adopt and apply the so-called “aggregate rule.” This “rule” comes from the Sixth Circuit case of Abdulahad v. Garland, 99 F.4th 275, 289 (6th Cir. 2024). Petitioner first appears to cite this case because the Sixth Circuit held the BIA abused its discretion because it assumed that longstanding discrimination against a persecuted group can categorically stop a petitioner from

showing changed country conditions. But here, the BIA did not apply a per se rule. Rather, it analyzed whether conditions had changed since 2017. The Sixth Circuit has acknowledged this very distinction. See Zakariya, 2025 WL 1672370 at *3 (distinguishing Abdulahad where the BIA focused on whether country conditions had changed). Petitioner also cites Abdulahad for the proposition that the relevant CFR requires immigration courts to consider the aggregate risk of torture from all sources and for all reasons. We need not decide in this case whether to adopt the Sixth Circuit’s approach to aggregation. Petitioner argues that the BIA made clear that it was not applying the aggregate approach. We disagree. The BIA cited Matter of J-R-G-P-, 27 I. & N. 482, 484 (BIA 2018)—the very case where the BIA endorsed aggregating the risk of torture from all sources, not as separate, divisible claims. Indeed, nothing in the BIA’s decision indicates that it treated Petitioner’s identity as Christian and Americanized as separate, divisible claims.

We DENY the Petition for review. Because we deny the petition, we also DENY his renewed emergency motion for stay of removal.

Entered for the Court

Joel M. Carson III
Circuit Judge