[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 18-14001
Non-Argument Calendar

Agency No. A098-995-807

ALEXIMAR BARROS,

Petitioner,

versus

U.S. ATTORNEY GENERAL,

Respondent.

Petition for Review of a Decision of the
Board of Immigration Appeals

(August 6, 2019)

Before MARTIN, NEWSOM, and ANDERSON, Circuit Judges.

PER CURIAM:

Aleximar Barros petitions for review of the Board of Immigration Appeals's ("BIA") final order, which denied his motion to reopen and rescind his *in absentia* deportation order. Barros argues that the BIA committed legal error when it stated that his motion to reopen was untimely and number barred because it was his first motion to reopen, because there is no time limit on a motion to reopen when there has been a removal *in absentia* and he did not receive proper notice, and because the motion stated new facts not available or discoverable at the time of the removal hearing.

Barros argues that his motion was not untimely because he submitted new evidence material to his asylum claim that could not have been discovered at the removal hearing. Barros argues that he established a *prima facie* case for asylum, withholding of removal, and protection under the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("CAT") relief because he risks persecution based on his political opinion and membership in a particular social group, that is, he fears persecution after his life was threatened by his wife's family member after they refused to help him. Barros also argues that the BIA failed to consider all the evidence and resolve the questions raised in his CAT petition and that the BIA erred by not addressing his request for *sua sponte* reopening of the removal hearing.

I.

We review the denial of a motion to reopen an immigration petition for an abuse of discretion. *Al Najjar v. Ashcroft*, 257 F.3d 1262, 1301-02 (11th Cir. 2001). This review is limited to determining whether the BIA exercised its discretion in an arbitrary or capricious manner. *Zhang v. U.S. Att'y Gen.*, 572 F.3d 1316, 1319 (11th Cir. 2009). The moving party bears a heavy burden, because motions to reopen are disfavored, especially in removal proceedings. *Id.*

Under the Immigration and Nationality Act ("INA"), an alien is generally limited to filing one motion to reopen. INA § 240(c)(7)(A), 8 U.S.C. § 1229a(c)(7)(A). A motion to reopen an *in absentia* removal order must be filed: (1) within 180 days after the date of the removal order, if the alien demonstrates that his failure to appear stemmed from exceptional circumstances; or (2) at any time, if the alien establishes that he did not receive proper notice of the proceeding at which he failed to appear. INA § 240(b)(5)(C), 8 U.S.C. § 1229a(b)(5)(C). A motion to reopen proceedings before the BIA shall state the new facts that will be proven at the hearing if the motion is granted and shall be supported by affidavits or other evidentiary material. INA § 240(c)(7)(B), 8 U.S.C. § 1229a(c)(7)(B), 8 C.F.R. § 1003.2(c)(1).

In removal proceedings, written notice shall be given in person to the alien or through service by mail. INA § 239(a)(1), 8 U.S.C. § 1229a(a)(1). During

processing, the alien must immediately provide an address at which the alien may be contacted regarding proceedings and must immediately provide a written record of any change of address, if necessary. INA § 239 (a)(1)(F)(i), (ii), 8 U.S.C. § 1229a(a)(1)(F)(i), (ii). If the alien fails to provide a proper address as required, no written notice is required. INA § 239(b)(5)(B); 8 U.S.C. § 1229a(b)(5)(B).

Here, the BIA did not abuse its discretion in denying Barros's motion to reopen with respect to lack of notice because the record establishes that the government was not required to provide written notice of the removal hearing. After his initial arrest, Barros was advised of the requirements to provide a valid address or change of address, if necessary, so that a notification of the removal hearing or other correspondences could be provided to him. Barros was advised that failure to comply with this requirement or to appear for his upcoming immigration hearing may result in his deportation *in absentia*. All of the forms provided were translated into Portuguese and Barros stated that he understood what was explained to him. Despite this, in his first motion to reopen, Barros admitted that the address he originally provided was not a valid address. Moreover, Barros never provided a change of address form. Thus, written notice of the hearing was not required by the government. *See* INA § 239(b)(5)(B), 8 U.S.C. § 1229a(b)(5)(B). Accordingly, the BIA did not abuse its discretion in denying

Barros's motion to reopen because Barros was provided notice of his removal hearing.

II.

The time limit for motions to reopen does not apply to applications "for asylum or withholding of deportation based on changed circumstances arising in the country of nationality or in the country to which deportation has been ordered, if such evidence is material and was not available and could not have been discovered or presented at the previous hearing." 8 C.F.R. § 1003.2(c)(3)(ii); INA § 240(c)(7)(C)(ii), 8 U.S.C. § 1229a(c)(7)(C)(ii). The term "changed circumstances" refers to circumstances that materially affect an applicant's eligibility for asylum, including, but not limited to, changes in the applicant's country of nationality, or changes in the applicant's circumstances, including activities the applicant has become involved in outside of the country wherein the applicant fears he will face persecution. 8 C.F.R. § 1208.4(a)(4)(i)(A) (B). However, an alien cannot circumvent the requirement of changed country conditions by demonstrating only a change in personal circumstances. *Zhang*, 572 F.3d at 1319.

Additionally, the BIA may *sua sponte* grant an exception to the number and time requirements. 8 C.F.R. § 1003.2(a). However, we lack jurisdiction to review

the BIA's denial of a motion to reopen based on its *sua sponte* authority. *Lenis v. U.S. Att'y Gen.*, 525 F.3d 1291, 1292 (11th Cir. 2008).

Here, the BIA did not abuse its discretion in denying Barros's motion to reopen because his motion was number barred and untimely and failed to provide any evidence of a change in country condition. Indeed, the record is clear that this is Barros's second motion to reopen. Moreover, Barros's current motion to reopen is untimely as it was filed in 2018, whereas the removal order he wishes to reopen was issued in 2006. INA § 240(b)(5)(C), 8 U.S.C. § 1229a(b)(5)(C). As such, Barros's motion to reopen would need to show a change in circumstances based on evidence that was not available at the removal hearing. *See* 8 C.F.R. § 1003.2(c)(3)(ii). While Barros does provide evidence that he fears persecution from his wife's family and that Brazil is currently a violent country, he critically fails to provide any evidence of country conditions at the time of the 2006 removal hearing from which to determine whether a material change in circumstances has occurred. Indeed, by failing to appear for his removal hearing the IJ found that Barros had abandoned any applications for relief from removal, and the requirement of showing a material change in circumstances from the time of the hearing is required to justify reopening and reconsideration of his removal more than 12 years later. Moreover, the only new evidence presented by Barros—threats by his wife's family member—is a change in personal circumstances,

which alone is not sufficient to show a change in country conditions. *See Zhang*, 572 F.3d at 1319. Therefore, Barros's reliance on threats from his wife's family member cannot circumvent the precondition of showing the material change in country conditions necessary to establish an exception to the time bar for reopening of his removal hearing. Additionally, this Court lacks jurisdiction to review the BIA's refusal to reopen removal proceedings under its sua sponte authority. *See Lenis*, 525 F.3d at 1292.

PETITION DENIED.