

1 UNITED STATES COURT OF APPEALS

2 FOR THE SECOND CIRCUIT

3 August Term, 2006

4 (Submitted: March 21, 2007 Decided: August 31, 2007  
5 Errata Filed: September 20, 2007)  
6 Docket No. 05-5741-ag  
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10 QIN WEN ZHENG,

11 Petitioner,

12 - v -

13 ALBERTO R. GONZALES,  
14 Attorney General of the United States

15 Respondent.  
16 -----

17 Before: SACK, PARKER, and HALL, Circuit Judges.

18 Petition for review of a decision by the Board of  
19 Immigration Appeals denying the petitioner's motion to reopen his  
20 asylum proceedings. The Board did not abuse its discretion in  
21 determining that the petitioner failed to demonstrate changed  
22 country conditions.

23 Petition denied.

24 Michael Brown, New York, NY, for  
Petitioner.

25 Margaret A. Hickey, Assistant United  
26 States Attorney for the Northern  
27 District of Illinois (Patrick J.  
28 Fitzgerald, United States Attorney,  
29 Craig Oswald, Assistant United States  
30 Attorney, on the brief), Chicago, IL,  
31 for Respondent.

1 SACK, Circuit Judge:

2 Qin Wen Zheng, a Chinese citizen from Changle City in  
3 the Fujian Province of China, petitions for review of a decision  
4 by the Board of Immigration Appeals ("BIA") denying his second  
5 motion to reopen proceedings in his case as untimely and  
6 numerically barred under 8 C.F.R. § 1003.2(c)(2). In re Qin Wen  
7 Zheng, No. A 77 224 430 (B.I.A. Oct. 18, 2005); see also 8 C.F.R.  
8 § 1003.2(c)(3)(ii) (allowing for one motion to reopen filed  
9 within ninety days of the final agency decision). Zheng contends  
10 that the BIA wrongly determined that he failed to demonstrate  
11 changed country conditions in China that might exempt the motion  
12 from those bars. As particularly relevant here, Zheng argues  
13 that the BIA erred in rejecting for lack of authentication a  
14 purported notice from a municipal government in China threatening  
15 him with "severe[] punish[ment]" if he did not abandon his  
16 application for asylum and return to China forthwith.

17 **BACKGROUND**

18 Zheng arrived in the United States in July 1998. He  
19 applied for asylum, withholding of removal, and relief under the  
20 Convention Against Torture<sup>1</sup> ("CAT") based on the alleged forced  
21 sterilization of his wife under the Chinese family-planning  
22 policy. At a hearing before Immigration Judge ("IJ") Adam

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<sup>1</sup> United Nations Convention Against Torture and Other  
Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10,  
1984, S. Treaty Doc. No. 100-20 (1988), 1465 U.N.T.S. 85. See  
also 8 C.F.R. § 208.16(c) (implementing regulations).

1 Opaciuch, Zheng conceded removability. He testified and  
2 submitted documentary evidence in support of his claims. On June  
3 23, 2000, the IJ denied Zheng's requests for relief, determining  
4 that his testimony was not credible because it was inconsistent  
5 with his prior statements and other documentary evidence, and  
6 that he, therefore, failed to meet his burdens of proof. In re  
7 Qin Wen Zheng, No. A 77 224 430 (Immig. Ct. N.Y. City June 23,  
8 2000). Zheng appealed to the BIA, which affirmed the IJ's  
9 decision, without opinion, on November 21, 2002. In re Qin Wen  
10 Zheng, No. A 77 224 430 (B.I.A. Nov. 21, 2002). Zheng did not  
11 petition this Court for review of that decision.

12 In October 2003, Zheng filed a motion to reopen his  
13 removal proceedings. He again argued the merits of his asylum  
14 claim and submitted, inter alia, affidavits from, and photographs  
15 of, his wife and children in China. On April 19, 2005, the BIA  
16 denied the motion, finding that Zheng had filed the motion beyond  
17 the ninety-day time limit and had failed to establish changed  
18 circumstances that would permit a late filing. In re Qin Wen  
19 Zheng, No. A 77 224 430 (B.I.A. Apr. 19, 2005). Again, Zheng  
20 refrained from petitioning this Court for review.

21 In August 2005, Zheng filed a second motion to reopen,  
22 claiming that he was newly eligible for relief based on changed  
23 country conditions in China. He submitted a variety of documents  
24 in support of his motion, including various country reports from  
25 the United States Department of State, the governments of the  
26 United Kingdom and Canada, and Amnesty International; a newspaper

1 article; an internet printout of a Chinese law addressing the  
2 entry and exit of citizens to and from China; and a copy of a  
3 decision by the United States Court of Appeals for the Ninth  
4 Circuit. He also submitted a notice allegedly sent to his wife  
5 from officials of his local village that, he contends,  
6 demonstrates that conditions had materially changed there.

7 The Village Notice

8 The notice that Zheng submitted was in Chinese  
9 accompanied by an English translation. Entitled "Notice" (we  
10 refer to it hereinafter as such), it is dated June 26, 2005, and  
11 its letterhead in the submitted English translation reads "Long  
12 Tian Villager Commission, Guhuai Town, Changle City, Fujian  
13 Province, China." It also appears to have a stamp on the lower  
14 right quadrant which is translated to read "Long Tian Villager  
15 Commission, Guhuai Town, Changle City." As translated, the  
16 Notice reads in its entirety:

17 The government is currently investigating those  
18 people who had left the country illegally and  
19 applied for asylum in overseas. Their behaviors  
20 has damaged our countries' international image.  
21 From the report we received, we found out that  
22 your husband, Zheng Qin Wen is among those people.  
23 He not only violated the family planning policy in  
24 China, but also illegally left China and went to  
25 the United States wherein he did something  
26 detrimental to our country's dignity. It is  
27 hereby ordered that you must persuade your husband  
28 Zheng Qin Wen immediately stopping his asylum  
29 application in overseas, coming back to China and  
30 surrendering himself to the government to obtain a  
31 lenient treatment. Otherwise, he will be severely  
32 punished if he is arrested.

1 The Notice was supported solely, and only to some extent, by an  
2 affidavit from Zheng's wife. Also translated from Chinese to  
3 English,<sup>2</sup> the affidavit rehearses the underlying assertions of  
4 Zheng's asylum application. The affidavit also attempts to  
5 provide further context to the local government's crackdown  
6 against Chinese citizens who apply for asylum elsewhere, and  
7 generally reiterates the message and substance of the Notice. It  
8 does not include any reference to the Notice.

9 The BIA Opinion

10 The BIA was unpersuaded by Zheng's submission. See In  
11 re Qin Wen Zheng, No. A 77 224 430 (B.I.A. Oct. 18, 2005) (per  
12 curiam). "Much of the evidence now presented, including the  
13 wife's affidavit and background material," it said, "was not  
14 previously unavailable or is not new. . . . The new country  
15 reports have not been highlighted. . . ." Id. The BIA  
16 continued: "[T]he purported notice from the respondent's home  
17 town has not been authenticated, a fact which is relevant in the  
18 context of this case in light of the [IJ's] adverse credibility  
19 finding." Id. The agency denied Zheng's motion to reopen on the  
20 grounds that his evidentiary submissions failed to demonstrate  
21 changed country conditions, which could have excepted the motion  
22 from the time and numerical bars that otherwise apply.

23 Zheng petitions for review.

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<sup>2</sup> Although the text of the "Translation Certificate" refers to Lawrence He as the translator, the document is signed by Allen Chan.

1 **DISCUSSION**

2 I. Standard and Scope of Review

3 Zheng's petition to this Court, filed on October 26,  
4 2005, is timely only as it pertains to the BIA's denial of his  
5 second motion to reopen on October 18, 2005. See 8 U.S.C.  
6 § 1252(b)(1) (requiring a petition for review to be filed no  
7 later than thirty days after the date of the order to be  
8 challenged). We therefore may review no more than that denial.  
9 See Kaur v. BIA, 413 F.3d 232, 233 (2d Cir. 2005) (per curiam)  
10 (noting that we are precluded from reviewing the underlying  
11 merits of an asylum claim on a motion to reopen).

12 It is undisputed that both the time and numerical bars  
13 pertaining to motions to reopen apply here. See 8 U.S.C.  
14 § 1229a(c)(7)(A), (C); 8 C.F.R. § 1003.2(c)(2).<sup>3</sup> Zheng argues,

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<sup>3</sup> The applicable portion of section 1229a provides:

(7) Motions to reopen.

(A) In general. An alien may file one motion to  
reopen proceedings under this section . . . .

. . . .

(C) Deadline.

(i) In general. Except as provided in this  
subparagraph, the motion to reopen shall be  
filed within 90 days of the date of entry of  
a final administrative order of removal.

(ii) Asylum. There is no time limit on the  
filing of a motion to reopen if the basis of  
the motion is to apply for relief under  
sections 208 or 241(b)(3) [8 USCS §§ 1158 or  
1251(b)(3)] and is based on changed country  
conditions arising in the country of  
nationality or the country to which removal  
has been ordered, if such evidence is  
material and was not available and would not

1     however, that he has demonstrated the existence of materially  
2     changed conditions in China affecting the possibility of his  
3     persecution there should he be forced to return, which would  
4     satisfy one of four possible exceptions to those limitations.  
5     See 8 C.F.R. § 1003.2(c)(3)(ii) ("[T]ime and numerical  
6     limitations . . . shall not apply to a motion to reopen  
7     proceedings . . . based on changed circumstances arising in the  
8     country of nationality or in the country to which deportation has  
9     been ordered, if such evidence is material and was not available  
10    and could not have been discovered or presented at the previous  
11    hearing.").

12             "A motion to reopen proceedings [must] state the new  
13    facts that will be proven at a hearing to be held if the motion  
14    is granted and shall be supported by affidavits or other  
15    evidentiary material." 8 C.F.R. § 1003.2(c)(1). Such a motion  
16    "[may] not be granted unless it appears to the [BIA] that  
17    evidence sought to be offered is material and was not available  
18    and could not have been discovered or presented at the former  
19    hearing." Id.

20             "We review the decision to deny a motion to reopen  
21    removal proceedings for abuse of discretion." Bhanot v.  
22    Chertoff, 474 F.3d 71, 73 (2d Cir. 2007) (per curiam). The BIA  
23    abuses its discretion if its decision "provides no rational

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  have been discovered or presented at the  
  previous proceeding.

8 U.S.C. § 1229a(c)(7)(A), (C).

1 explanation, inexplicably departs from established policies, is  
2 devoid of any reasoning, or contains only summary or conclusory  
3 statements." Alrefae v. Chertoff, 471 F.3d 353, 357 (2d Cir.  
4 2006) (internal quotation marks and citation omitted).

## 5 II. The Notice

6 The propriety of the BIA's decision to deny Zheng's  
7 second motion to reopen depends on its conclusion that Zheng had  
8 not established a change in country conditions, which in turn was  
9 based in part on the BIA's refusal to credit the Notice. The BIA  
10 noted that the Notice lacked authentication, which, "in light of  
11 the [IJ's] adverse credibility finding," prompted the BIA to  
12 reject the document's authenticity. Citing no authority, Zheng  
13 argues that "the Board committed a legal error in giving no  
14 weight to the merit of the evidence[,] instead focusing on the  
15 admissibility of the evidence." Pet. Br. at 7.

16 We conclude that the BIA, in relying on the adverse  
17 credibility determination made by the IJ following Zheng's asylum  
18 hearing, reasonably rejected the authenticity of the Notice. In  
19 Siewe v. Gonzales, 480 F.3d 160 (2d Cir. 2007), we found that the  
20 doctrine of falsus in uno, falsus in omnibus supported a general  
21 adverse credibility finding based on a determination that the  
22 petitioner had submitted a fraudulent document. Id. at 170. In  
23 reaching that conclusion, we noted that "a single false document  
24 or a single instance of false testimony may (if attributable to  
25 the petitioner) infect the balance of the alien's uncorroborated



1 or unauthenticated evidence." Id. Similarly, in Borovikova v.  
2 U.S. Dep't of Justice, 435 F.3d 151 (2d Cir. 2006), we decided  
3 that the conclusion that a document was fraudulent supported a  
4 general finding of adverse credibility sufficient to reject an  
5 asylum application. Id. at 157-58. The BIA's use here of the  
6 IJ's unchallenged conclusion that Zheng was not credible in  
7 support of its refusal to credit the authenticity of the Notice  
8 was similarly appropriate.

9 The BIA's decision to reject the Notice was further  
10 buttressed by the inconsistencies between it and the "new country  
11 reports" that Zheng submitted in an attempt to demonstrate that  
12 country conditions had changed adversely and materially. The  
13 2004 Department of State report on China submitted by Zheng  
14 states:

15 The Chinese Government accepts the  
16 repatriation of citizens who have entered  
17 other countries or territories illegally. In  
18 the past several years, hundreds of Chinese  
19 illegal immigrants have been returned from  
20 the United States, and U.S. Embassy officials  
21 have been in contact with scores of them. In  
22 most cases, returnees are detained long  
23 enough for relatives to arrange their travel  
24 home. Fines are rare. U.S. officials in  
25 China have not confirmed any cases of abuse  
26 of persons returned to China from the United  
27 States for illegal entry. Persons identified  
28 as organizers or enforcers of illegal migrant  
29 trafficking are liable to face criminal  
30 prosecution in China.

31 China: Profile of Asylum Claims and Country Conditions, U.S.

32 Department of State, Bureau of Democracy, Human Rights and Labor,

1 at 33 (June 2004).<sup>4</sup> Although the BIA is required to consider an  
2 applicant's countervailing evidence in addition to State  
3 Department reports, see Cao He Lin v. U.S. Dep't of Justice, 428  
4 F.3d 391, 403 (2d Cir. 2005), the BIA does not abuse its  
5 discretion in crediting the State Department reports in the face  
6 of uncorroborated anecdotal evidence to the contrary, Wei Guang  
7 Wang v. BIA, 437 F.3d 270, 274-76 (2d Cir. 2006); see also Mu  
8 Xiang Lin v. U.S. Dep't of Justice, 432 F.3d 156, 159-60 (2d Cir.  
9 2005). Apart from the Notice, we have found no evidence in the  
10 record indicating that Zheng's act of leaving China to seek  
11 asylum in the United States without permission from Chinese  
12 authorities would, without more, result in Zheng's persecution.

13 Although Zheng does not mention the case, his argument  
14 raises a question akin to one of those we examined in Cao He Lin.  
15 There, we addressed the denial by an immigration judge of an  
16 application for asylum and concluded that the IJ errs if he or  
17 she rejects a document supporting the application solely because

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<sup>4</sup> The petitioner also submitted a September 1999 report from the Immigration and Refugee Board of Canada, which examines the treatment of illegal emigrants who return to Fujian province. Although the BIA properly disregarded this submission because it was available to the petitioner at the time of his original asylum application, the report focuses on the illegal activities of immigrant smugglers, known as "snakeheads," not the emigrants themselves. The lone discussion of the role of the Chinese government centers on its response to the snakeheads' activities, and its attempt to crackdown on the improper treatment of Chinese returnees by the snakeheads. The provisions of Chinese law cited in the document focus primarily on those who facilitate the illegal exit from and entry into the country, and on any citizens who obtain immigration documents through illegal means.

1 it was not properly authenticated under the BIA's regulations.<sup>5</sup>  
2 See Cao He Lin, 428 F.3d at 405. We reasoned that "[b]ecause  
3 asylum applicants can not always reasonably be expected to have  
4 an authenticated document from an alleged persecutor," id., 428  
5 F.3d at 404 (internal citation and quotation marks omitted), the  
6 BIA's authentication regulation "is not the exclusive means of  
7 authenticating records before an immigration judge," id.; accord  
8 Xue Deng Jiang v. Gonzales, 474 F.3d 25, 29 (1st Cir. 2007)  
9 (noting that the IJ commits error when it "reject[s] . . .  
10 documents solely because they were not authenticated in strict  
11 conformity with the regulation"); Yong Ting Yan v. Gonzales, 438  
12 F.3d 1249, 1256 n.7 (10th Cir. 2006) ("[C]ourts generally do not  
13 view the alien's failure to obtain authentication as requiring  
14 the rejection of a document." (citing Cao He Lin, 428 F.3d at  
15 404)); see also Khan v. INS, 237 F.3d 1143, 1144 (9th Cir. 2001)  
16 (noting that "[t]he procedure specified in 8 C.F.R. § 287.6  
17 provides one, but not the exclusive, method" of authentication  
18 (internal quotation marks and citation omitted)).

19 As we have discussed, however, the BIA's refusal to  
20 credit the Notice in this case did not depend on the lack of  
21 official authentication consonant with BIA regulations alone.  
22 The BIA's rejection of the Notice's authenticity was based

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<sup>5</sup> Regulations governing authentication of official records and public documents in BIA proceedings include the requirement, generally, that specified foreign documents must be authenticated, either as official documents or as an attested copy authorized by both foreign-country officials and the United States Foreign Service. 8 C.F.R. § 287.6.

1 substantially on legitimate concerns about Zheng's credibility  
2 and contrary evidence in the record. That removes this case from  
3 the teaching of Cao He Lin.<sup>6</sup>

4 We do not reach the question of whether the BIA might  
5 err if it required strict compliance with 8 C.F.R. § 287.6 for  
6 foreign documents submitted in support of motions to reopen. We  
7 recognize that it may not be possible for an applicant filing a  
8 motion to reopen to obtain from a foreign government valid and  
9 proper authentication of a document such as the Notice, which  
10 purports to threaten persecution of an individual seeking asylum  
11 elsewhere, even if the evidence supporting its authenticity were

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<sup>6</sup> We note further that the context of the immigration proceeding was crucially different in Cao He Lin, which addressed a petition for review of the denial of an asylum application. An applicant for asylum may meet his burden of proof based entirely on his testimony alone; corroborating documents are not required. See 8 C.F.R. § 1208.13(a) ("The testimony of the applicant, if credible, may be sufficient to sustain the burden of proof without corroboration."). Corroborating evidence is required in an asylum proceeding only "where it would reasonably be expected." Diallo v. INS, 232 F.3d 279, 285 (2d Cir. 2000). A motion to reopen based on changed country conditions, by contrast, depends solely on a showing of previously unavailable, material documentary evidence in support of the underlying proceeding. The Board may consider only the documents submitted to establish that conditions have indeed changed critically since the applicant's departure from his home country. The concerns motivating the Cao He Lin panel are largely absent. The petitioner need not have -- indeed could not have -- brought the required documents with him given the requirement that the evidence must have been previously unavailable, see Wei Guang Wang, 437 F.3d at 274 (concluding that evidence obtained before the petitioner left China could not support the BIA's grant of a motion to reopen because such proof could not amount to "evidence that 'is material and was not available and could not have been discovered or presented at the previous hearing'" (quoting 8 C.F.R. § 1003.2(c)(3)(ii)), but the petitioner nevertheless must present credible, documentary evidence in order for the BIA to grant the motion.

1 credible.<sup>7</sup> We decide only that, in this case, the BIA did not  
2 abuse its discretion in declining to consider a document --  
3 questionable on its face, supported only by a spouse's affidavit,<sup>8</sup>  
4 and not authenticated pursuant to regulation -- that attempts to  
5 establish the sweeping proposition that subsequent to the date of  
6 the petitioner's entry into the country and application for  
7 asylum, country conditions had undergone a material adverse  
8 change sufficient to affect his petition for asylum.

9 B. Other Evidence

10 The petitioner's other evidence, and arguments in  
11 support thereof, are also unavailing. The BIA acted within its  
12 discretion in determining that many of the documents submitted to  
13 it were previously available and that the country reports alone  
14 did not demonstrate changed country conditions. Zheng failed to

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<sup>7</sup> Conversely, we have found that a foreign government's statement that a document is not authentic may be of limited probative value. In Zhen Nan Lin v. U.S. Dep't of Justice, 459 F.3d 255, 269-70 (2d Cir. 2006) (finding unreliable a United States Consular Report that relied entirely "on the opinions of Chinese government officials who appear to have powerful incentives to be less than candid on the subject of their government's persecution of political dissidents" because "[w]here . . . the document at issue, if authentic, is evidence that a foreign government violated human rights, that government's 'opinion' as to the document's authenticity is obviously suspect and therefore of questionable probative value").

<sup>8</sup> To the extent that the wife's affidavit was submitted in an effort to authenticate the Notice -- which is not clear from the text of the affidavit, as it does not mention the Notice -- it fails to do so. In addition to the fact that it includes no mention of the Notice, such as how, when, and where the wife received it, the affidavit merely reiterates the underlying asylum arguments and the substance of the Notice.

1 explain why any of the documents, which were dated from September  
2 1999 to February 2004, could not have been submitted earlier.

3 **CONCLUSION**

4 The BIA did not abuse its discretion in denying the  
5 motion to reopen. The petition is denied. Our review having  
6 been completed, the petitioner's request for a stay of removal is  
7 also denied.