

SEP 24 2010

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

HUI YING LI,

Petitioner,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 08-70242

Agency No. A095-577-109

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted September 13, 2010**

Before: SILVERMAN, CALLAHAN, and N.R. SMITH, Circuit Judges.

Hui Ying Li, a native and citizen of China, petitions for review of the Board of Immigration Appeals' ("BIA") order denying her motion to reopen removal proceedings. We have jurisdiction under 8 U.S.C. § 1252. We review for abuse of

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

discretion the denial of a motion to reopen. *Iturribarria v. INS*, 321 F.3d 889, 894 (9th Cir. 2003). We deny the petition for review.

The BIA did not abuse its discretion in denying Li's second motion to reopen as untimely and number-barred, because she filed it nearly two years after the BIA issued its final administrative order, *see* 8 C.F.R. § 1003.2(c)(2), and Li failed to demonstrate changed circumstances in China to qualify for the regulatory exception to the time limit and numerical bar for filing motions to reopen, *see* 8 C.F.R. § 1003.2(c)(3)(ii); *see also He v. Gonzales*, 501 F.3d 1128, 1131-32 (9th Cir. 2007) (change in personal circumstances is does not establish changed circumstances in the country of origin excusing untimely motion to reopen).

Li's contention that the BIA failed to consider evidence presented with the motion to reopen fails, because she has not overcome the presumption that the BIA did review the evidence. *See Fernandez v. Gonzales*, 439 F.3d 592, 603 (9th Cir. 2006).

PETITION FOR REVIEW DENIED.