

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

DEC 19 2018

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

ALI GHahremani-NEJAD,

No. 17-73413

Petitioner,

Agency No. A088-515-850

v.

MEMORANDUM*

MATTHEW G. WHITAKER, Acting
Attorney General,

Respondent.

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

Submitted December 17, 2018**

Before: WALLACE, SILVERMAN, and McKEOWN, Circuit Judges.

Ali Ghahremani-Nejad, a native and citizen of Iran, petitions for review of the Board of Immigration Appeals' ("BIA") order denying his motion to reopen removal proceedings. We have jurisdiction under 8 U.S.C. § 1252. We review for abuse of discretion the denial of a motion to reopen and we review de novo

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

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

questions of law. *Mohammed v. Gonzales*, 400 F.3d 785, 791-92 (9th Cir. 2005).

We deny in part and grant in part the petition for review, and we remand.

The BIA did not abuse its discretion in denying Ghahremani-Nejad's motion to reopen as untimely where he filed it more than seven years after the BIA's final decision, *see* 8 C.F.R. § 1003.2(c)(2), and where Ghahremani-Nejad failed to demonstrate changed country conditions in Iran to qualify for an exception to the time limitation for motions to reopen, *see* 8 C.F.R. § 1003.2(c)(3)(ii); *see also* *Najmabadi v. Holder*, 597 F.3d 983, 987-90 (9th Cir. 2010) (evidence must be "qualitatively different" to warrant reopening).

In denying Ghahremani-Nejad's motion to reopen as untimely, the BIA failed to address his request for sua sponte relief. Thus, we remand for the BIA to consider Ghahremani-Nejad's request in the first instance. *See Sagaydak v. Gonzales*, 405 F.3d 1035, 1040 (9th Cir. 2005) ("[T]he BIA [is] not free to ignore arguments raised by a petitioner.").

Each party shall bear its own costs for this petition for review.

**PETITION FOR REVIEW DENIED in part; GRANTED in part;
REMANDED.**