

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-2088

ALEXIS ESEH NKWELLE,

Petitioner,

v.

MERRICK B. GARLAND, Attorney General,

Respondent.

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

Submitted: June 28, 2022

Decided: June 30, 2022

Before NIEMEYER and HEYTENS, Circuit Judges, and TRAXLER, Senior Circuit Judge.

Petition denied by unpublished per curiam opinion.

ON BRIEF: Adam Solow, SOLOW, HARTNETT & GALVAN, LLC, Philadelphia, Pennsylvania, for Petitioner. Brian Boynton, Principal Deputy Assistant Attorney General, Anthony P. Nicastro, Assistant Director, Andrew B. Insenga, Office of Immigration Litigation, Civil Division, UNITED STATES DEPARTMENT OF JUSTICE, Washington, D.C., for Respondent.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Alexis Eseh Nkwelle, a native and citizen of Cameroon, petitions for review of the Board of Immigration Appeals' order denying his motion to reopen removal proceedings. We deny the petition for review.

A noncitizen may file one motion to reopen within 90 days of the entry of a final order of removal. 8 U.S.C. § 1229a(c)(7)(A), (C); 8 C.F.R. § 1003.2(c)(2) (2022). These numerical and temporal limitations do not apply if the basis for the motion is to seek asylum or withholding of removal based on changed country conditions, provided that the noncitizen's evidence of the same "is material and was not available and would not have been discovered or presented at the previous proceeding." 8 U.S.C. § 1229a(c)(7)(C)(ii); *accord* 8 C.F.R. § 1003.2(c)(3)(ii) (2022).

We review the denial of a motion to reopen for abuse of discretion. *See Lawrence v. Lynch*, 826 F.3d 198, 203 (4th Cir. 2016); *see also* 8 C.F.R. § 1003.2(a) (2022). The Board's "denial of a motion to reopen is reviewed with extreme deference, given that motions to reopen are disfavored because every delay works to the advantage of the [noncitizen] who wishes merely to remain in the United States." *Sadhvani v. Holder*, 596 F.3d 180, 182 (4th Cir. 2009) (internal quotation marks omitted). As such, this court will reverse the denial of a motion to reopen only if that ruling "is arbitrary, capricious, or contrary to law." *Garcia Hernandez v. Garland*, 27 F.4th 263, 266 (4th Cir. 2022).

There is no dispute that this, Nkwelle's third motion to reopen, was both number- and time-barred. *See* 8 C.F.R. § 1003.2(c)(2). We have reviewed Nkwelle's arguments on appeal, in conjunction with the administrative record, and conclude that substantial

evidence supports the Board's finding that Nkwelle failed to establish a material change in country conditions so to excuse the number-barred and late-filed motion to reopen. *See accord Jian Hui Shao v. Mukasey*, 546 F.3d 138, 168-69 (2d Cir. 2008) (providing for substantial evidence review of the Board's factual findings related to its evaluation of evidence of a purported material change in country conditions); *Liu Jin Lin v. Barr*, 944 F.3d 57, 62 (1st Cir. 2019) ("It is well settled that the persistence of negative conditions, regardless of how grave they are, is insufficient to establish changed country conditions and, thus, warrant reopening.").

Accordingly, we deny the petition for review. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

PETITION DENIED