

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 16-60803
Summary Calendar

United States Court of Appeals
Fifth Circuit
FILED
October 24, 2017

Lyle W. Cayce
Clerk

SUMIT KUMAR,

Petitioner

v.

JEFFERSON B. SESSIONS, III, U. S. ATTORNEY GENERAL,

Respondent

Petition for Review of an Order of the
Board of Immigration Appeals
BIA No. A087 993 682

Before KING, SMITH, and HIGGINSON, Circuit Judges.

PER CURIAM:*

Sumit Kumar, a native and citizen of India, failed to appear at his December 13, 2010, removal hearing and was ordered removed from the United States in absentia. Six years later, Kumar moved to reopen his removal proceedings and to rescind the in absentia removal order. The Immigration Judge (IJ) determined that the motion was untimely and that neither equitable tolling nor changed country conditions warranted reopening the proceedings.

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

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The Board of Immigration Appeals (BIA) agreed and dismissed Kumar's ensuing appeal. Kumar now petitions this court for review of the BIA's order.

Kumar argues that the BIA misunderstood his argument and abused its discretion in not equitably tolling the 180-day limitations period that he faced in filing the motion to rescind the in absentia order of removal. He asserts that tolling was warranted because he relied on an uncle who fraudulently misrepresented the steps in Kumar's removal proceedings. Kumar asserts that the limitations period should begin from the time he consulted counsel who filed the motion to reopen.

In declining to equitably toll the limitations period, the BIA addressed Kumar's assertion that he had relied on his uncle's misrepresentation that he would have the case transferred to a closer venue and would follow up with him about the pending removal hearing. Moreover, Kumar does not state the date he consulted counsel, and he has not shown that he diligently pursued his rights, given that he obtained copies of the record in his removal proceedings in February 2014 but did not file the instant motion to reopen the proceedings and rescind the removal order until April 2016. *See Lugo-Resendez v. Lynch*, 831 F.3d 337, 343-44 (5th Cir. 2016). Nor has he shown that an extraordinary circumstance beyond his control prevented him from complying with the 180-day deadline. *See id.* at 344.

Kumar argues also that the BIA erred in denying his motion to reopen the removal proceedings because he offered evidence of changed conditions in India. Kumar's argument that he made a *prima facie* showing of eligibility for asylum is inapposite. *See I.N.S. v. Doherty*, 502 U.S. 314, 323 (1992). Moreover, as the BIA observed, Kumar's evidence showed an ongoing pattern of political violence that existed when he left India, such that he failed to show

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a material change in country conditions. *See Ramos-Lopez v. Lynch*, 823 F.3d 1024, 1026 (5th Cir. 2016).

The petition for review is DENIED.