

**NONPRECEDENTIAL DISPOSITION**  
To be cited only in accordance with FED. R. APP. P. 32.1

**United States Court of Appeals**  
**For the Seventh Circuit**  
**Chicago, Illinois 60604**

Submitted November 21, 2023\*  
Decided November 22, 2023

*Before*

FRANK H. EASTERBROOK, *Circuit Judge*

MICHAEL B. BRENNAN, *Circuit Judge*

THOMAS L. KIRSCH II, *Circuit Judge*

No. 23-1188

XIAOKE LIU,  
*Petitioner,*

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

*v.*

No. A205-948-142

MERRICK B. GARLAND,  
Attorney General of the United States,  
*Respondent.*

**ORDER**

Xiaoke Liu, a citizen of China, petitions for review of an order of the Board of Immigration Appeals denying his motion to reopen removal proceedings. Liu had sought to reopen his case so that he could present, for the first time, his reasons for challenging the immigration judge's denial of his asylum application. Because Liu's

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\* We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

motion was untimely, we deny the petition in part. We dismiss the remainder because we lack jurisdiction otherwise to review the Board's decision.

According to testimony that Liu gave to the immigration judge, farmland that he owned in northern China was seized in 2012 by village officials to build a chemical factory. Liu protested the land grab for several months, until police arrested and beat him. He fled to the United States and applied for asylum, arguing that his opposition to these events constituted a political belief for which he was persecuted.

An immigration judge denied relief, concluding that, although Liu testified credibly, his mistreatment stemmed from a personal dispute with village authorities rather than any political activity. Liu filed a notice of appeal to the Board. But he filed neither an opening brief nor a reply to the government's brief, so the Board summarily affirmed. *See* 8 C.F.R. § 1003.1(d)(2)(i)(A), (E).

Nearly five years later, Liu moved to reopen his case with the Board so that he could submit a "late-filed brief" in connection with his asylum proceedings. He argued that his tardiness should be excused because he had been "unable to function" — on account, first, of severe depression, and later the COVID-19 pandemic.

The Board denied the motion as untimely. It explained that the 30-day and 90-day time limits for motions to reconsider or reopen, respectively, had long since passed, 8 C.F.R. § 1003.2(b)–(c), and no exception applied. It also declined to reopen the case on its own motion because Liu failed to demonstrate the necessary exceptional circumstances: He submitted no evidence of his severe depression, nor did he explain how this condition or COVID-19 (which arose years later) prevented him from timely filing a brief with the Board.

In his petition for review, Liu focuses primarily on the merits of his asylum application, challenging the immigration judge's characterization of his opposition to the land seizure as merely a personal dispute. But by failing to raise this argument in a timely filed brief before the Board, he waived any challenge to the denial of his asylum application. 8 U.S.C. § 1252(d)(1); *Kithongo v. Garland*, 33 F.4th 451, 457 (7th Cir. 2022).

Liu also argues that the Board wrongly refused to consider the late-filed brief that he attached to his motion. He maintains that his lack of legal training and the effects of his depression and the COVID-19 pandemic prevented him from filing the brief in a timely manner. But there are only limited exceptions to the 90-day time limit for filing motions to reopen, 8 C.F.R. § 1003.2(c), and Liu's depression and the

COVID-19 pandemic do not fall into any of them. Liu perhaps believes the “changed circumstances” exception applies, 8 C.F.R. § 1003.2(c)(3)(ii), as he points to the 2020 and 2022 State Department reports on human rights that address the Chinese government’s restrictions on peaceful assembly and punishment of those who raise grievances.<sup>1</sup> But we have reviewed the country reports Liu cites and see no indication that conditions in China have reached a “new threshold” of human rights abuses for people like Liu. *See Meriyu v. Barr*, 950 F.3d 503, 508 (7th Cir. 2020) (citation omitted).

Finally, Liu argues that his depression and the COVID-19 pandemic were extraordinary circumstances that warranted the Board’s exercise of its power to reopen the case on its own motion. *See* 8 C.F.R. § 1003.2(a) (2020). But we lack jurisdiction to review the Board’s decision not to reopen a case sua sponte unless it was tainted by legal error, *Wojciechowicz v. Garland*, 77 F.4th 511, 515–16 (7th Cir. 2023), and we see nothing objectionable—and certainly no legal error—here.

We considered Liu’s remaining arguments, and none has merit. Accordingly, we DENY the petition for review as to the Board’s order on the motion to reopen. To the extent the petition seeks review of the Board’s refusal to exercise its sua sponte authority, it is DISMISSED for lack of jurisdiction.

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<sup>1</sup> The government argues that we may not consider the 2022 report because Liu did not cite it in his motion to the Board. The government is wrong; we may take judicial notice of country reports even if the Board did not. *Meriyu v. Barr*, 950 F.3d 503, 508 (7th Cir. 2020).