FILED

MAR 14 2019

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

GABRIEL RAZCON-GAMEZ, Petitioner, v. WILLIAM P. BARR, Attorney General, Respondent.	No. 16-72847 Agency No. A092-659-321 MEMORANDUM[*]

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

Submitted March 5, 2019[**]
Phoenix, Arizona

Before: IKUTA and FRIEDLAND, Circuit Judges, and BLOCK,[***] District Judge.

Gabriel Razcon-Gamez petitions for review of an order of the Board of

[*] 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).

[***] The Honorable Frederic Block, United States District Judge for the Eastern District of New York, sitting by designation.

Immigration Appeals (BIA) denying his motion to reopen. We have jurisdiction under 8 U.S.C. § 1252.

The BIA did not abuse its discretion in determining that Razcon-Gamez's motion to reopen was untimely. The 90-day deadline for motions to reopen deportation proceedings established by regulation, *see* 8 C.F.R. § 1003.2(c)(2), was promulgated in April 1996 and made effective July 1, 1996, *see* Executive Office for Immigration Review; Motions and Appeals in Immigration Proceedings, 61 Fed. Reg. 18,900 (Apr. 29, 1996). It is therefore not impermissibly retroactive as to Razcon-Gamez, who was placed in exclusion proceedings in August 1996.

The regulation establishing the deadline for motions to reopen to apply for relief under the Convention Against Torture (CAT) specifies that "[a]n alien under a final order of deportation, exclusion, or removal that became final prior to March 22, 1999 may move to reopen proceedings for the sole purpose of seeking protection under § 1208.16(c)," so long as the motion to reopen is filed by June 21, 1999. 8 C.F.R. § 1208.18(b)(2). Because Razcon-Gamez filed his motion to reopen after June 21, 1999, the BIA did not abuse its discretion in concluding that it was untimely.

The BIA's determination that Razcon-Gamez had not demonstrated a change in country conditions material to his claim for relief under CAT because his

evidence was not sufficiently individualized, *see Najmabadi v. Holder*, 597 F.3d 983, 992 (9th Cir. 2010), was supported by substantial evidence. Therefore, the exception to the time bar for filing a motion to reopen based on changed country conditions, *see* 8 C.F.R. § 1003.2(c)(3)(ii), was not applicable to Razcon-Gamez's motion to reopen.

PETITION FOR REVIEW DENIED.