

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

NOV 20 2023

FOR THE NINTH CIRCUIT

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

REBECCA MAKAWA,

Petitioner,

v.

MERRICK B. GARLAND, Attorney
General,

Respondent.

No. 22-1644

Agency No.
A075-614-982

MEMORANDUM*

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

Submitted November 14, 2023**
Seattle, Washington

Before: McKEOWN and GOULD, Circuit Judges, and BAKER,** International
Trade Judge.

Rebecca Makawa, a citizen of Zimbabwe, petitions for review of the Board of
Immigration Appeals' order denying her motion to reopen her removal proceedings

* 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 M. Miller Baker, Judge for the United States Court of
International Trade, sitting by designation.

to allow her to reapply for asylum and withholding of removal. In 1999 an Immigration Judge granted her application for voluntary departure; the Board ultimately dismissed her appeal as abandoned but granted her voluntary departure within 60 days. In 2017, she moved to reopen based on alleged changed circumstances relating to the treatment of homosexuals in Zimbabwe. The Board denied that motion because her evidence did not show any change in conditions in Zimbabwe. We denied her petition for review in late 2020. *Makawa v. Barr*, 829 F. App'x 841 (9th Cir. 2020) (mem.).

Nearly four months later, Makawa filed a second motion to reopen and for a stay of removal in which she sought asylum based on an alleged material change in country conditions in Zimbabwe due to the COVID-19 pandemic. She claimed that she was diagnosed with AIDS in 2015, that she will be unable to obtain treatment in Zimbabwe, and that Zimbabweans blame homosexuals for the pandemic. The Board denied the motion to reopen¹ because Makawa's evidence related only to the general global situation involving the pandemic's effect on indigenous communities, poor people, and homosexuals, contained no specific evidence about Zimbabwe, and did not show that conditions in Zimbabwe materially changed for homosexuals because of the pandemic.

¹ The Board denied the motion for a stay of removal as moot.

We review the Board’s denial of a motion to reopen for an abuse of discretion, and we must uphold the decision unless it is arbitrary, irrational, or contrary to law. *Singh v. Garland*, 46 F.4th 1117, 1121 (9th Cir. 2022). While an alien is normally limited to filing one motion to reopen within 90 days of the removal order, there is no time limit when the motion is based on changed country conditions in the country of nationality. *Id.* To prevail on a motion to reopen, a petitioner must (1) produce evidence of changed conditions in the country of removal, (2) show that the evidence is material, (3) show that the evidence was unavailable and would not have been discovered or presented at the previous hearing(s), and (4) establish prima facie eligibility for relief. *Id.* The new evidence of changed country conditions must also be “qualitatively different” from the evidence presented at the original hearing. *Id.* (quoting *Malty v. Ashcroft*, 381 F.3d 942, 945 (9th Cir. 2004)).

Furthermore, we review only the denial of the motion to reopen—we do not review the merits of Makawa’s claim for withholding of removal or asylum. *Siong v. INS*, 376 F.3d 1030, 1042 (9th Cir. 2004). “ ‘The critical question is not whether the allegations bear some connection to a prior application, but rather whether circumstances have changed sufficiently that a petitioner who previously did not have a legitimate claim’ now does.” *Agonafer v. Sessions*, 859 F.3d 1198, 1204 (9th Cir. 2017) (quoting *Malty*, 381 F.3d at 945).

The Board found that Makawa “has not established that reopening is warranted on the basis of her claim that because of the COVID-19 pandemic her access to medical treatment will be [a]ffected or that the pandemic has caused Zimbabwe to become more hostile to” homosexuals. The Board noted that Makawa’s evidence consisted of “generalized news articles and reports” that were “not specific to Zimbabwe.”

A review of the four news articles attached to Makawa’s motion confirms the Board’s assessment. The first article discusses COVID-19’s impact on indigenous people in Central America, India, Nepal, Colombia, the United States, South Africa, and Ecuador. The second article, which discusses COVID-19’s effect on economic inequality, does mention Zimbabwe, but says only that half the population of Harare has “undependable access to safe drinking water” at home. The third article discusses AIDS in the time of COVID-19 and refers to pandemic-related discrimination against homosexuals in Uganda, Kenya, and Malawi. Its only discussion of Zimbabwe, however, refers to another report and a comment by a Zimbabwean LGBTQ community leader who “described the role of the media in closing civic space in Zimbabwe . . . leading to a climate where civil society leaders are being arrested and human rights work essentially criminalised.” Finally, the fourth article discusses pandemic restrictions amplifying health risks to people with HIV, but it has a dateline of Nairobi and Mexico City and refers to events in Uganda,

Kenya, Mozambique, Ukraine, Lebanon, Kyrgyzstan, Trinidad and Tobago, Egypt, and Mexico. Its sole mention of Zimbabwe appears in a list of several countries where COVID-related shutdowns and associated lack of transport and loss of income made it more difficult for people to access medication.

The statute permitting motions to reopen requires evidence of “changed country conditions arising in the country of nationality or the country to which removal has been ordered.” 8 U.S.C. § 1229a(c)(7)(C)(ii). The Board did not abuse its discretion in finding that Makawa’s evidence was insufficient to satisfy the statutory standard and that her motion to reopen was therefore both untimely and “number-barred.”

PETITION DENIED.