File: (b) (6)

Date: NOV 22 2011

In re: (b) (6)

IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: Adedayo O. Idowu, Esquire

APPLICATION: Reopening

The respondent is a citizen and national of China. In a decision dated February 27, 2003, the Immigration Judge denied his applications for asylum, withholding of deportation, and protection under the Convention Against Torture. The Immigration Judge found that the respondent was not credible regarding claims of past persecution, and had not established a well-founded fear of future persecution, on account of China's coercive population policies. *See* Immigration Judge's Decision at 8-14. The Board affirmed this decision without opinion on June 28, 2004. On review, the United States Court of Appeals for the (b) (6) upheld the adverse credibility finding but remanded for consideration of a question of law going to the meaning of "refugee" that the court concluded should be decided initially by the Board. (b) (6) *B.I.A.*, The Board decided the question adversely to the respondent and dismissed his appeal in a published decision on June 7, 2007. (b) (6) The (b) (6) denied his petition for review. (b) (6) The respondent subsequently filed an untimely motion to reopen, which the Board denied on September 25, 2009, finding that the motion failed to establish materially changed country conditions in China.

The respondent filed the instant motion to reopen on March 22, 2011. While all previous administrative and judicial proceedings in this case have concerned China's coercive population policies, the instant motion seeks reopening on account of the respondent's conversion to Christianity in the United States and fear of religious persecution if he returns to China. *See, e.g.*, Motion to Reopen at 5, 10. The Department of Homeland Security has not responded to the motion. *See* 8 C.F.R. § 1003.2(g). The motion will be denied.

The motion is untimely, having been filed more than 6 years after the final administrative order in the case. *See* section 240(c)(7)(C)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1229a(c)(7)(C)(i) (90-day time limit for motions to reopen); 8 C.F.R. § 1003.2(c)(2) (same). The motion is further barred because the respondent has previously moved to reopen these proceedings. *See* section 240(c)(7)(A) of Act, 8 U.S.C. § 1229a(c)(7)(A) (alien may file only one motion to reopen). An otherwise untimely or number-barred motion may be granted if it is based on materially changed conditions in the country of nationality. *See* section 240(c)(7)(C)(ii) of the Act; 8 C.F.R. § 1003.2(c)(3)(ii). It is, however, respondent's "heavy burden" to show that the proffered evidence is material, reflects changed circumstances arising in the country of nationality, and supports a prima facie case for a grant of asylum. *See Matter of S-Y-G-*, 24 I&N Dec. 247, 258 (BIA 2007).

The respondent's Christian conversion and religious activities in the United States are supported by documentation. *See* Motion to Reopen, Tabs F-H, K. The conversion and religious activities, however, constitute a personal circumstance in the United States, rather than a country condition arising in China. It is well-settled that a change in personal circumstances does not establish an exception to the restrictions imposed on motions brought before the Board. *See Zheng v. U.S. Dep't of Justice,* 416 F.3d 129, 130-31 (2d Cir. 2005) (changed personal circumstances do not establish an exception to the filing deadline); *Wang v. BIA*, 437 F.3d 270, 275 (2d Cir. 2006) ("circumstances entirely of [asylum applicant's] own making after being ordered to leave the United States" are not ground for untimely reopening).

The respondent contends that the instant motion falls within the changed country conditions exception, arguing that conditions for Christians in China have recently worsened. *See* Motion to Reopen at 6 ("the Chinese government's crackdown upon Christians has become severer"). The respondent expresses a fear of arrest, persecution, and jailing by Chinese authorities, particularly because he would participate in an underground church. *Id.* at 10. The motion is supported by a set of news articles and country reports. *Id.*, Tabs M-O.

The evidence submitted with the motion does not show that conditions for Christians or church members in China have materially changed since the time of the respondent's hearing before the Immigration Judge. The evidence submitted with the motion reflects that Chinese authorities continue to take repressive and harassing actions against nonsanctioned churches and their members, the degree of which varies locally. *See, e.g., id.*, Tab O at 7. The evidence before the Immigration Judge reported harassment and short-term detentions of members of nonsanctioned churches, though the degree of repression varied locally. *See, e.g.*, Exh. 7 at 4-11. The country conditions in China appear substantially the same as the conditions that existed at the time of the respondent's 2003 hearing.

Moreover, the respondent makes no showing that the Chinese authorities are aware, or are likely to become aware, of his Christian activities in the United States and intend to persecute him for that reason. *See Leng v. Mukasey*, 528 F.3d 135, 143 (2d Cir. 2008) (holding that an applicant who has not provided any evidence of past persecution and seeks to establish a well-founded fear of persecution based on his political activities in the United States "must make some showing that authorities in his country of nationality are either aware of his activities or likely to become aware of his activities"); *Huang v. I.N.S.*, 421 F.3d 125, 129 (2d Cir. 2005) (holding that, absent "solid support in the record" for the petitioner's assertion that he would be subjected to persecution, his fear was "speculative at best").

The Board has considered the translated letter from the respondent's wife in China. Motion to Reopen, Tab J. The letter states generally that there is no genuine freedom of religion in China, that underground churches meet secretly in homes, and that an unnamed person was arrested, detained and beaten at an unspecified time, and expresses the hope of joining the respondent in the United States. This document is entitled to minimal weight, particularly because it is unauthenticated, does not provide specific facts about actual past events, and was obtained by a family member for purposes of these removal proceedings. *See Matter of H-L-H- & Z-Y-Z-*, 25 I&N Dec. 209, 214-15 (BIA 2010).

(b) (6)

The Board recognizes that China lacks genuine religious freedom and Christians, particularly in the unsanctioned churches, continue to face harassment and repression. But there is no showing in the record of this case that the respondent faces any specific threat amounting to persecution. There is no dispute that Christians in China face widespread harassment, repression, and even persecution, but that has been true continuously since the respondent's hearing in 2003 and for many years previously. The motion therefore provides no basis to conclude that country conditions in China have materially changed since the time of the hearing in this case. Accordingly, the motion will be denied.

ORDER: The motion to reopen and motion for a stay are denied.

FOR THE BOARD

In re J-H-S-, Respondent

Decided June 7, 2007

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

A person who fathers or gives birth to two or more children in China may qualify as a refugee if he or she establishes that the births are a violation of family planning policies that would be punished by local officials in a way that would give rise to a well-founded fear of persecution.

FOR RESPONDENT: Gary J. Yerman, Esquire, New York, New York

FOR THE DEPARTMENT OF HOMELAND SECURITY: Anne Bhargava, Assistant Chief Counsel

BEFORE: Board Panel: HOLMES, GRANT, and MILLER, Board Members.

HOLMES, Board Member:

In a decision dated February 27, 2003, an Immigration Judge denied the respondent's application for asylum, finding that he lacked credibility, failed to establish that he suffered past persecution on account of his opposition to family planning policies, and failed to establish a well-founded fear of future persecution. On June 28, 2004, we affirmed the Immigration Judge's decision without opinion.

This case is now before us on remand from the United States Court of Appeals for the Second Circuit, which rejected the respondent's challenge to the Immigration Judge's adverse credibility determination in its October 12, 2006, order. *See Jian Hui Shao v. BIA*, 465 F.3d 497 (2d Cir. 2006). The court remanded the case for us to consider "whether a person who fathers or gives birth to two or more children in China, in apparent violation of China's family planning policies, may qualify on that basis alone as 'a person who has a well founded fear that he or she will be forced' by the Chinese government 'to abort a pregnancy or to undergo involuntary sterilization' and may accordingly qualify as a refugee" under section 101(a)(42) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(42) (2000). *Id.* at 498. Both parties have filed additional briefs on remand. On consideration of the Second Circuit's mandate and the record in the instant case, we will again affirm the Immigration Judge's decision and will dismiss the respondent's appeal.

I. FACTUAL AND PROCEDURAL HISTORY

The record reflects that the respondent was born in Fuzhou City in the Fujian Province of China in January 1972. He married his wife in China on October 24, 1997. In March 1999, the respondent's wife gave birth to their first child, a daughter. The respondent claims that his wife was fitted with an intrauterine device to prevent further pregnancy, but they paid to have the device removed in September 2001 and his wife subsequently became pregnant for the second time.

According to the respondent, his wife missed a regularly-scheduled gynecological exam in January 2002 because she believed she might be pregnant. She went into hiding, where she ultimately gave birth to the couple's second daughter on September 20, 2002. The respondent claims that during the time his wife was in hiding, birth control officials arrested him, detained him for 2 days, and beat him in an attempt to coerce him into revealing his wife's hiding place. He states that he refused to reveal the information and ultimately escaped his holding cell through the help of a former classmate. Thereafter, the respondent fled to the United States, arriving in February 2002, and was in this country at the time of the birth of his second child. He filed an application for asylum in September 2002.

Apart from the facts that the respondent fathered two children in China and has been present in the United States since February 2002, the respondent's claims were found to lack credibility by the Immigration Judge, who specifically found reason to doubt the veracity of the respondent's claim that he had a violent encounter with birth control officials in China. We affirmed that finding as not clearly erroneous in our decision and it was, in turn, affirmed by the Second Circuit. *See Jian Hui Shao v. BIA*, *supra*, at 500-01. As a result, nothing in the record indicates that the respondent had any contact with family planning or other law enforcement authorities in China.

Although the Second Circuit found that the Immigration Judge's adverse credibility determination was supported by substantial evidence, the court recognized the possibility that the respondent could have presented a viable claim for relief simply by virtue of the undisputed fact that he has fathered two children in China, a country that places certain restrictions on citizens' ability to procreate. Pursuant to the Second Circuit's order, we must decide whether "one who fathers two children in violation of China's family planning policy, as [the respondent] asserts he has done, may–*on that basis alone*, without any need for particularized evidence of past persecution or threats of future harm–qualify as a 'refugee' as defined by the [Act]." *Jian Hui Shao v. BIA*, *supra*, at 501 (emphasis added) (footnote omitted). As we conclude below, an alien who has established that he or she has had two children in China may

qualify as a refugee if the evidence presented establishes, on a case-by-case basis, that the births violated family planning policies in that alien's local province, municipality, or other locally-defined area, and that current local family planning enforcement efforts would give rise to a well-founded fear of persecution because of the violation.

II. ANALYSIS

A. Family Planning Policies

As an initial matter, we note that the respondent cannot meet his burden of proving that he suffered past persecution in China, given the fact that he was found to lack credibility regarding his past interactions with birth control officials in China. Therefore, the only issue for our consideration on remand is whether the birth of his two daughters in China gives rise to a well-founded fear of future persecution. The respondent bears the burden of proving past persecution, as well as his claim that fathering two daughters in China gives rise to a well-founded fear of persecution. In this case, because there is no past persecution, and therefore no rebuttable presumption of a well-founded fear of future persecution, the respondent must prove that he has a subjectively genuine and objectively reasonable well-founded fear of persecution. *INS v. Cardoza-Fonseca*, 480 U.S. 421 (1987).

Assuming that the respondent has a genuine fear of returning to China, the starting point for determining whether there is objective evidence supporting this fear is proof of the details of the family planning policy relevant to each individual case. *Matter of C-C-*, 23 I&N Dec. 899 (BIA 2006). Although in general China's family planning policy has been termed a "one child" policy, in practice it is apparent that deviations from the general rule of "one child" persist. *See* Bureau of Democracy, Human Rights, and Labor, U.S. Dep't of State, *China Country Reports on Human Rights Practices–2005* [Mar. 8, 2006], *available at* http://www.state.gov/g/drl/rls/hrrpt/2005/61605.htm [hereinafter *2005 Country Reports*].[1] In general, China's 2002 National Population and Birth Planning Law allows married couples to have one child as a matter of right and permits many couples to have a second within certain time frames. *See* Bureau of Democracy, Human Rights, and Labor, U.S. Dep't of State, *China: Profile of Asylum Claims and Country Conditions* 24

[1] We note that this report is cited by the respondent in the brief he submitted on remand. We have authority to take administrative notice of this report, as well as the more recent reports released by the United States Department of State. *See Yang v. McElroy*, 277 F.3d 158, 163 n.4 (2d Cir. 2002); 8 C.F.R. § 1003.1(d)(3)(iv) (2007); *see also infra* note 3.

(May 2007) [hereinafter *2007 Profile*]; *see also* Bureau of Democracy, Human Rights, and Labor, U.S. Dep't of State, *China: Profile of Asylum Claims and Country Conditions* 21 (Oct. 2005) [hereinafter *2005 Profile*]. Deviations in implementing this law occur at the provincial, or even village, level. *See 2007 Profile*, *supra*, at 23. The *2007 Profile* specifically states that the "implementation of birth planning policy in villages . . . is the responsibility of local officials." *Id.* Moreover, certain geographic and ethnic factors may trigger exceptions to the "one-child" policy. Chinese living in rural areas–including parts of Fujian Province, where the respondent's home is located–have been authorized to have a second child, particularly where the first child is female. *See 2005 Country Reports*, *supra*. In Anhiu Province, some 13 categories of married couples (including coal miners, remarried divorcees, and farm couples) are permitted to have a second child. *Id.* Ethnic minorities may also be allowed more than one child. *Id.*; *see also 2007 Profile*, *supra*, at 24.

If an applicant has established the details of the specific "policy" applicable in his or her case, a related inquiry arises as to whether the facts in the record establish that the alien violated the policy.[2] For example, if an alien established that no exceptions to the one-child policy applied, the question becomes whether the alien has established, through credible testimony or otherwise, that he or she has fathered or given birth to more than one child, in violation of that policy. This point is particularly relevant to cases in which an alien claims to have violated family planning policy by having two or more children in the United States. In *Matter of C-C-*, *supra*, at 903, we found that the alien had not met her burden of proving that giving birth to two United States citizen children would be viewed by local family planning officials as a violation of that province's population control laws. *See also Matter of J-W-S-*, 24 I&N Dec. 185 (BIA 2007). But even where, as here, an alien claims to have fathered (or given birth to) two children in China, the same initial two-part burden applies. That is, the alien must prove that there was a policy against such births and that he or she, in fact, violated the policy. Evidence reflecting a violation of established policy may include birth certificates for all children born to a couple, or other evidence reflecting their birth.

Assuming that this burden has been met, the alien must also establish that the violation of the family planning policy would be punished in the local area in a way that would give rise to an objective fear of future persecution. Just

[2] As discussed below, a demonstrated policy is not itself enough. Many countries have policies, even laws, that for any number of reasons–lack of resources, ability, or political will–simply are not meaningfully enforced.

as exceptions to the so-called "one-child" policy abound, enforcement of the policy varies greatly, depending on locality. *See 2005 Profile, supra.* Local officials' "personalities, interests, and personal connections . . . often influence their enforcement of national, provincial, and local laws, regulations, and policies, including birth planning policies." *2007 Profile, supra,* at 23. Such disparate influences tend to result in "uneven" enforcement of national policies. *Id.* In the past, enforcement efforts in Fujian Province, where the respondent comes from, were specifically described as "lax" or "uneven" in published reports and court decisions. *See, e.g.*, Bureau of Democracy, Human rights, and Labor, U.S. Dep't of State, *China: Profile of Asylum Claims and Country Conditions* 20, 25 (Apr. 14, 1998) [hereinafter *1998 Profile*]; *Huang v. U.S. INS*, 421 F.3d 125, 128 (2d Cir. 2005).

In a recent report on the subject, the State Department described the enforcement efforts as follows:

> Those who violated the child limit policy by having an unapproved child or helping another to do so faced disciplinary measures such as job loss or demotion, loss of promotion opportunity, expulsion from the party (membership in which was an unofficial requirement for certain jobs), and other administrative punishments, including in some cases the destruction of property. In the case of families that already had two children, one parent was often pressured to undergo sterilization. These penalties sometimes left women with little practical choice but to undergo abortion or sterilization. There were several rewards for couples who adhered to birth limitation laws and policies, including monthly stipends and preferential medical and educational benefits.

Bureau of Democracy, Human Rights, and Labor, U.S. Dep't of State, *China Country Reports on Human Rights Practices–2006* (Mar. 6, 2007), *available at* http://www.state.gov/g/drl/rls/hrrpt/2006/78771.htm [hereinafter *2006 Country Reports*].

The Chinese Government as a whole clearly achieves compliance with birth limits using both incentives and pressure. At issue is whether an alien can prove that he or she personally faces a well-founded fear of persecution–generally, forced abortion or sterilization. "Pressure" to undergo abortion or sterilization may not necessarily mean physical or mental *coercion* in the above context of economic rewards and benefits. Indeed, the State Department recently reported that although "public and other pressure" is used in Fujian Province to encourage compliance with birth planning laws, officials "did not find any cases of physical force employed in connection with abortion or sterilization." *2007 Profile, supra,* at 26. Enforcement efforts resulting in moderate economic impact would not, in general, prove a well-founded fear of future persecution. *See Matter of T-Z-*, 24 I&N Dec. 163 (BIA 2007); *Matter of Y-T-L-*, 23 I&N Dec. 601, 606 (BIA 2003). Whether

more severe economic sanctions can rise to the level of persecution is a question best addressed on a case-by-case basis. *Cf. Guan Shan Liao v. U.S. Dep't of Justice*, 293 F.3d 61, 67, 70 (2d Cir. 2002).

We acknowledge evidence that China's system of using pressure and incentives to achieve family planning goals has to some extent included physical coercion. In particular, in some localities, reports have emerged that scores of married couples have been detained and forced to submit to pregnancy testing, with the result that those who were found to have unauthorized pregnancies (or children) were placed into "population schools," described most recently by the State Department as "unofficial prisons." *2007 Profile*, *supra*, at 24. The most recent State Department *Country Reports* reflect that forced sterilizations and abortions, in violation of the national law, continued to be documented in rural areas. *See 2006 Country Reports*, *supra*. "Reports" of forced sterilizations also came from Fujian Province, which has both urban and rural populations. *See 2007 Profile*, *supra*, at 26-27. Moreover, a recent decision from the Second Circuit has stated that an information handbook apparently distributed in or around 1999 to family planning officials responsible for Changle City, Fujian Province, states that the birth control measure imposed upon the birth of a second child is sterilization. *See Shou Yung Guo v. Gonzales*, 463 F.3d 109, 115 (2d Cir. 2006) (noting that a July 1999 *Q&A for Changle City Family-Planning Information Handbook* lends "powerful potential support" to a claim that a parent of two children would be subject to forced sterilization).

In sum, the question whether the birth of two children in China gives rise to a well-founded fear of persecution depends on the facts of each case, including, in particular, the details of local family planning policies, proof that an alien violated such policies, and evidence that local enforcement efforts against the violation will rise to the level of persecution. Evidence bearing on all of these factors must, taken together, establish that a reasonable person in the respondent's circumstances would fear persecution if he returned to his home country. *Matter of Mogharrabi*, 19 I&N Dec. 439, 445 (BIA 1987). *See generally INS v. Cardoza-Fonseca*, *supra*.

B. Application to the Respondent's Case

Applying the above framework to the respondent's case, we accept the fact, for purposes of this appeal, that the respondent is the father of two daughters in China. However, because the respondent's testimony was deemed not credible as to his past dealings with family planning officials and his flight from their enforcement efforts, we cannot credit any of his claims that his wife's second pregnancy triggered enforcement efforts against him for violating birth limits. We therefore must turn to other evidence of record for

a description of local family planning policies and enforcement practices. Based on the record as a whole, we find that the respondent has not presented sufficient evidence to prove a well-founded fear of future persecution in Fujian Province on account of having fathered two daughters there.

The background evidence of record currently consists of the aforementioned *1998 Profile* and the 2001 State Department *Country Reports*. *See* Bureau of Democracy, Human Rights, and Labor, Dep't of State, *China Country Reports on Human Rights Practices–2001* (Mar. 4, 2002), *available at* http://www.state.gov/g/drl/rls/hrrpt/2001/eap/8289.htm. As noted above, we also are considering more recent documents authored by the State Department to reflect current country conditions. *See 2006 Country Reports*, *supra*; *2005 Country Reports*, *supra*; *2007 Profile*, *supra*; *2005 Profile*, *supra*.[3] Such reports generally have been deemed credible and authoritative sources of information. *See Matter of V-T-S-*, 21 I&N Dec. 792, 799 (BIA 1997).

The record does not clearly show that the birth of the respondent's second child would be viewed as a violation of family planning policies in Fujian Province.[4] The evidence reflects that where the first child is a girl, a Chinese couple can apply to have a second child. Because the respondent was not credible, we do not know whether he and his wife ever sought such permission, and whether the second child is, in fact, properly classified as an "overbirth" in Fujian Province. We also do not know the extent to which the respondent accepted or declined the stipends or other benefits mentioned in the State Department's *Country Reports* and *Profiles*.

Assuming that the birth of the respondent's second child would be viewed as unauthorized, the record does not contain persuasive evidence that this birth would trigger enforcement activity in Fujian Province. Enforcement efforts in that province were described as "lax" and "uneven" in the *1998 Profile*, and countrywide enforcement was similarly described as "uneven" in the *2007 Profile*. Of course, we acknowledge "reports" of forced sterilizations of women in that province as documented in the *2006 Country Reports*, *supra*, but note that physical coercion continues to be officially condemned. Indeed,

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[3] We take administrative notice of these reports and consider them in the context of the entire record, including contrary evidence presented by the respondent. *Chen v. U.S. INS*, 359 F.3d 121, 130 (2d Cir. 2004).

[4] We note that such determinations are a prerequisite to a finding that there is a "pattern or practice of persecution" of persons similarly situated to the respondent, a point that the respondent argues on remand. *See* 8 C.F.R. § 1208.13(b)(2)(iii)(A) (2007).

in 2006, State Department interviews with visa applicants from Fujian Province yielded "no evidence" of forced abortions. *2007 Profile*, *supra*, at 27.

The Second Circuit has observed that certain documents reflect that the birth control measure imposed upon birth of a second child in Changle City, Fujian Province, is "sterilization." *See Show Yung Guo v. Gonzales*, *supra*, at 113. However, there is no indication that the court's reference is to a policy of forcible sterilization, as opposed to China's well-documented system of offering incentives to obtain compliance with birth control limits. As a whole, the record lacks persuasive evidence to prove that the mere birth of two children in China would trigger family planning enforcement efforts that would rise to the level of persecution under the circumstances of this case. On balance, the evidence suggests that physical coercion to achieve compliance with family planning goals is uncommon and unsanctioned by China's national laws, and that the overall policy is much more heavily reliant on incentives and economically-based penalties. Given the evidence of record regarding the circumstances of this respondent and the most recent available evidence of country conditions in China, we find that the respondent has not carried his burden of showing that he has a well-founded fear of persecution in China on account of fathering two children. Accordingly, the respondent's appeal will be dismissed.

ORDER: The appeal is dismissed.

File: (b) (6) Date: SEP 25 2009

In re: (b) (6)

IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: Gary J. Yerman, Esquire

ON BEHALF OF DHS: Fen Lu
Assistant Chief Counsel

APPLICATION: Reopening

The respondent's motion to reopen is untimely and will be denied. His request for a stay of removal will be denied as moot. The respondent is a native and citizen of the People's Republic of China from Fuzhou City in Fujian Province. His case was most recently before the Board on remand from the United States Court of Appeals for the (b) (6) when we dismissed his appeal in a published decision dated June 7, 2007. (b) (6) The (b) (6) Circuit dismissed his petition for review in (b) (6) (b) (6) On June 26, 2009, the respondent filed the pending motion. The Department of Homeland Security opposes the motion.[1]

The respondent does not dispute that his motion was filed out of time. *See* section 240(c)(7)(C)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1229a(c)(7)(C)(i); 8 C.F.R. § 1003.2(c)(2); *Matter of Susma*, 22 I&N Dec. 947 (BIA 1999). Rather, he argues that he has submitted new and previously unavailable evidence showing a material change in country conditions regarding coercive family planning practices in China, and that his motion thus falls within an exception to the general filing deadline. *See* section 240(c)(7)(C)(ii) of the Act; 8 C.F.R. § 1003.2(c)(3)(ii). He argues that the Chinese government has cracked down on family planning violations since the 2008 Beijing Olympics, and that because he and his wife have two daughters, who were born in China in 1999 and 2002, the family planning office has notified him or his wife to report for a sterilization operation and has assessed a fine of 80,000 renminbi (RMB).

Motions to reopen are disfavored, and the moving party bears a heavy burden. *Shao*, *supra*, at 168 (citing cases). In his affidavit, the respondent repeats his prior claim, which was also based on coercive family planning practices, without addressing the prior adverse credibility finding. He cannot relitigate his previously rejected claim through an untimely motion to reopen. He avers that his second child cannot go to school without being registered in the household registration in China.

[1] The Board grants the DHS's request to accept its late-filed response in opposition to the motion.

Even assuming without deciding that this is correct, he has not shown a realistic possibility that any such discrimination would rise to the level of persecution under the asylum law as to himself.

Some of the voluminous materials submitted with the motion, which are similar to those in many other motions filed by counsel, pertain to alleged events that predate the February 2003 hearing below and do not support the respondent's claim of a material change in country conditions. Some of the proffered materials pertain to Chinese citizens who were allegedly sterilized and fined in 2003 or 2004 upon returning from Japan with foreign-born children; these materials, which were originally submitted with different aliens' cases, are stale, and they differ on their alleged facts. We consider each case on its own particular facts. The Board has also previously considered some of the other materials filed with the pending motion and found they did not show a material change in the family planning policy. *See Matter of S-Y-G-, supra*; *see also Matter of J-H-S-*, 24 I&N Dec. 196 (BIA 2007); *Matter of J-W-S-*, 24 I&N Dec. 185 (BIA 2007); *Matter of C-C-*, 23 I&N Dec. 899 (BIA 2006). Some of the other proffered materials – including, among others, many articles pertaining to events outside Fujian Province – do not pertain to the respondent's home area, though the *Country Reports* submitted with the motion indicate that the enforcement of the family planning policy varies significantly from place to place.

Consistent with the proffered materials at Exh. II-3(a), the *Country Reports* for 2008 at Exh. II-3(b)(ii) indicate that the Chinese government has continued to implement its family planning policy, relying upon education, propaganda, and economic incentives, as well as on more coercive measures, including psychological pressure and economic penalties; and that central government policy formally prohibited forced abortion or sterilization, though there were reports that local officials had used forced abortion and sterilization to meet family planning targets in violation of national policy. Instead of tending to show a material change in the family planning policy, the materials submitted with the motion show a continuation of the policy. We give considerable weight to the recent *Country Reports*. These materials and the March 2008 *New York Times* article [Exh. II-2(d)] also indicate that a high-level official has announced that the family planning policy would not change for at least a decade.

The respondent has submitted his wife's letter and purported notices dated in December 2008 from the Family Planning Office (FPO) of Mawei District, Fuzhou City (Exh. I-h). In her unsworn letter, his wife repeated the previously rejected coercive family planning claim; however, the adverse credibility finding was fatal to that claim. In her letter, she vaguely stated that she was hiding in a relative's house, but the respondent's updated Form I-589 indicates that his wife and children are in Fuzhou, Fujian, where his parents and siblings also live. The respondent has not shown that his wife has had any significant difficulties with the family planning officials. Also, the purported FPO notices are not signed or authenticated. We give them very little weight, particularly in view of the prior adverse credibility finding and the comments in the advisory 1998 *Profile* (Exh.7 at the hearing below) regarding widespread fabrication and fraud in documents from the respondent's home area.[2] *See* 8 C.F.R. § 1287.6; *Matter of S-Y-G-, supra* (genuine, authentic, and objectively reasonable evidence is required for reopening); *see also Zheng v. Gonzales*, 500 F.3d 143 (2d Cir. 2007) (the Board did not abuse its discretion in declining to credit a purported village notice where the

[2] We also note that the respondent signed his name to blank Supplements A & B to the Form I-589.

document was not authenticated and the alien had been found not credible by the Immigration Judge). We separately note that the references to sterilization and a fine do not in themselves tend to show a reasonable possibility that the respondent would suffer "forced" sterilization within the meaning of the asylum law, in violation of China's national family planning law, or that he would suffer economic sanctions that would rise to the level of persecution. The married respondent averred that the fine amount, which the notice stated was due in 5 days, was equivalent to their joint income for five years. However, he failed to provide any other financial evidence or to establish, for example, that installment payments, with or without a separate loan, were not a possibility. A showing of extreme economic deprivation may qualify as persecution if the harm to be exacted amounts to severe economic disadvantage. However, a showing of economic sanctions does not amount to persecution where the record contains scant information concerning the applicant's financial situation. *Matter of T-Z-*, 24 I&N Dec. 163 (BIA 2007). In sum, the respondent has not made a *prima facie* showing of a realistic possibility that he would be subjected to "forced" sterilization, or economic or other harm amounting to persecution. *See Shao, supra*; *Matter of J-W-S-, supra*; *Matter of S-Y-G-, supra*.

We decline to apply the nonbinding out-of-circuit case law cited by the respondent. We conclude that under controlling Second Circuit law the respondent's marriage and fathering of two children in China are changes in his personal circumstances that do not fall within an exception to the time and number limits for a motion to reopen. *See Shao, supra*; *Yuen Jin v. Mukasey*, 538 F.3d 143 (2d Cir. 2008); *Wang v. Board of Immigration Appeals*, 437 F.3d 270 (2d Cir. 2006); *Zheng v. U.S. Dep't of Justice*, 416 F.3d 129, 130-131 (2d Cir. 2005); *Matter of C-W-L-*, 24 I&N Dec. 364 (BIA 2007); *see also Xiao Xing Ni v. Gonzales*, 494 F.3d 260 (2d Cir. 2007).

To the extent that the respondent is also seeking reopening for protection under the Convention Against Torture (CAT), his motion to reopen is untimely and numerically barred. Additionally, he has not made a *prima facie* showing of a probability of torture by or with the acquiescence of a government official. *See* 8 C.F.R. §§ 1208.16(c), 1208.18(a); *Matter of J-F-F-*, 23 I&N Dec. 912 (A.G. 2006).

On April 10, 2002, the Board held that effective 90 days from that date we would no longer grant reopening on our own motion for asylum claims based solely on coercive population control policies. *Matter of G-C-L-*, 23 I&N Dec. 359 (BIA 2002). We only exercise our limited discretion to reopen *sua sponte* in "exceptional situations." *Matter of J-J-*, 21 I&N Dec. 976, 984 (BIA 1997) (noting that "[t]he power to reopen on our own motion is not meant to be used as a general cure for filing defects or to otherwise circumvent the regulations, where enforcing them might result in hardship"). The respondent has not shown any "exceptional" situation that would warrant *sua sponte* reopening. *See Matter of J-J-, supra*; *see also Ali v. Gonzales*, 448 F.3d 515 (2d Cir. 2006).

ORDER: The motion to reopen and the stay request are denied.

FOR THE BOARD