

Third Circuit Court

Case: *Bamaca-Cifuentes v. A.G.*, 870 F.3d 108 (3d Cir. 2017)

Date: Aug. 29, 2017

Panel: McKee, Cowen, Fuentes

Opinion: McKee

Tags: Immigration, Motion to Reopen, CAT petition, time bar

Question(s) Presented: Does the time bar contained in 8 C.F.R. § 1003.2(c) apply to MTRs based on request for withholding of removal under CAT as well?

Holdings: Yes, time bar applies to CAT as well.

Rationale: “It is clear from the unambiguous text of 8 C.F.R. § 1003.2(c) that the time and number restrictions in that regulation apply to all motions to reopen removal proceedings, regardless of the motion’s underlying basis for relief.” 110

- Here: obviously untimely MTR, and no real evidence of changed country conditions.

Facts: Citizens of Guatemala (father and sons) entered U.S. in 1990, 1998, 2004. In 1999 father filed an application for suspension of deportation under Nicaraguan Adjustment and Central American Relief Act. USCIS denied petition, referred them to IJ.

Procedural History:

- **2008: Removal Proceedings:** conceded removability
- **2012: ICH:** IJ denied NACARA application. Petitioners ordered removed to Guatemala.
- **2013: BIA** dismissed appeal.
- **2015:** MTR filed with BIA based on changed country conditions in Guatemala.
- **2016: BIA** denied MTR. No evidence of material change in country conditions.

Attorneys’ Arguments:

- **Respondents:** BIA should have considered evidence of changed country conditions and waived time bar for MTR under CAT.

Appeals to Statute & Precedent:

- **8 C.F.R. § 1003.2(c):** number & time bar on MTR: ONE MTR filed NO LATER THAN 90 DAYS after the date on which the final administrative decision was rendered in the proceeding sought to be reopened. (Exceptions found in next section—**asylum** and **withholding** claims based on changed country conditions & supported by newly available material evidence.)
- **8 U.S.C. § 1182(a)(6)(A)(i):** EWI and removable

Relevant U.S. History:

- **Nicaraguan Adjustment and Central American Relief Act (NACARA):** 1997—gives stay of deportation to certain Central American asylum-seekers who had been in U.S. for at least 5 years since Dec. 1, 1995.

Discussion:

- Petitioners could not satisfy either prong of changed country conditions (materiality & unavailable previously)—no clear date of onset of supposed changed conditions, so BIA measured from Jan. 2012 and found nothing.
- “A review of the evidence submitted confirms that it largely dealt with ongoing problems in Guatemala, and did not provide a basis for finding that there was a material change in conditions there after Jan. 2012.”