

Immigration Court: BIA**Case:** *Matter of D-G-C-*, 28 I&N Dec. 297 (BIA 2021)**Date:** June 7, 2021**Adjudicated by:** Greer, Wilson, Goodwin**Opinion:** Goodwin

Tags: Immigration, asylum, one-year deadline, changed circumstances, continuation of activity in U.S., proselytizing, Christians, China

Question Presented: What principles govern in determining whether a particular fact, or facts, constitutes a ‘changed circumstance’ for purposes of section 208(a)(2)(D) and in assessing whether a changed circumstance materially affects an applicant’s eligibility for asylum?

Holdings: “The mere continuation of an activity in the U.S. that is substantially similar to the activity from which an initial claim of past persecution is alleged and that does not significantly increase the risk of future harm is insufficient to establish ‘changed circumstances’ to excuse an untimely asylum application within the meaning of section 208(a)(2)(D) of the Act.” 302

Rationale: Proselytizing = proselytizing, so what’s the change? “On the contrary, the respondent’s present claim remains premised on the same fear of the Chinese authorities he possessed prior to coming to the U.S., as well as the same protected ground, and therefore does not adequately set forth a change in the respondent’s particular circumstances.” 301

Facts: Citizen of People’s Republic of China. Entered U.S. on B-2 visa Jan 6, 2012 and overstayed. Affirmative application for asylum filed Nov. 12, 2013 based on religious persecution. Continued to mail fliers and proselytize in China via email while in U.S.; was warned that officials had discovered the emails and were searching for him.

Procedural History:

- **2013: IJ** denied asylum application because he missed the one-year deadline and that he had failed to establish changed circumstances & persecution.
- **2020: Appeal** to BIA—insists he did show changed circumstances & persecution.

Appeals to Statute & Precedent:

- **8 C.F.R. § 1208.4(a)(4)(i)(B):** “changed circumstances” can include “changes in applicable U.S. law and activities the applicant becomes involved in outside the country of feared persecution that place the applicant at risk.” 299
- ***Matter of R-A-F-*, 27 I&N Dec. 778 (A.G. 2020):** Reviewing fact of changed circumstances de novo because it involves an application of law to the determined facts.
- ***Weinong Lin v. Holder*, 763 F.3d 244 (2d Cir. 2014):** Changed circumstances can excuse an untimely application if they materially affect the chances he or she would suffer persecution if returned to their country.

Discussion:

- Applicant's circumstances must be qualitatively different.
- "Thus, to be material, changed circumstances must significantly affect the applicant's eligibility for asylum as a consequence of newly established facts or a new legal basis for relief." 300
- Respondent argues that "his activity in the U.S. constitutes 'changed circumstances' because the proselytizing materials he emailed to people in China increased or renewed the police's interest in him and increased the risk that he will be rearrested and persecuted if he is removed to China, leading him to apply for asylum." 300-01
- "Because the police's interest in the respondent existed before his departure from China, and continued after he left, the respondent has not shown that their interest in him has either significantly increased or intensified as a result of his actions in the United States." 302