

1 UPON DUE CONSIDERATION of this petition for review of a
2 Board of Immigration Appeals ("BIA") decision, it is hereby
3 ORDERED, ADJUDGED, AND DECREED that the petition for review
4 is DENIED.

5 Petitioner Tian-Bao Xiao, a native and citizen of the
6 People's Republic of China, seeks review of an October 27,
7 2016 decision of the BIA, denying Xiao's motion to reopen.
8 *In re Tian-Bao Xiao*, No. A072 474 278 (B.I.A. Oct. 27, 2016).
9 We assume the parties' familiarity with the underlying facts
10 and procedural history in this case.

11 The applicable standards of review are well established.
12 See *Jian Hui Shao v. Mukasey*, 546 F.3d 138, 168-69 (2d Cir.
13 2008). In his motion to reopen, Xiao asserted that
14 conditions for Christians worsened in China over the years
15 since the agency's entry of his removal order, excusing his
16 untimely filing of the motion and demonstrating his prima
17 facie eligibility for asylum in light of his conversion to
18 Christianity in the United States.¹

19 Xiao untimely filed his motion to reopen in 2016,
20 nineteen years after his deportation order became final in

¹ Xiao also asserted a fear of forced sterilization under China's family planning policy. Xiao has abandoned any related claim for asylum, however, by not raising it in his brief on appeal. See *Yueqing Zhang v. Gonzales*, 426 F.3d 540, 541 n.1, 545 n.7 (2d Cir. 2005).

1 1997. See 8 U.S.C. § 1229a(c)(7)(C)(i); 8 C.F.R.
2 § 1003.2(c)(2). The statutory time limitation for filing a
3 motion to reopen does not apply, however, where a petitioner
4 seeks reopening to apply for asylum, and the motion "is based
5 on changed country conditions arising in the country of
6 nationality or the country to which removal has been ordered,
7 if such evidence is material and was not available and would
8 not have been discovered or presented at the previous
9 proceeding." 8 U.S.C. § 1229a(c)(7)(C)(ii); 8 C.F.R.
10 § 1003.2(c)(3). The BIA did not err in finding that Xiao
11 failed to demonstrate such changed country conditions.

12 "In determining whether evidence accompanying a motion
13 to reopen demonstrates a material change in country
14 conditions that would justify reopening, [the BIA] compare[s]
15 the evidence of country conditions submitted with the motion
16 to those that existed at the time of the merits hearing
17 below." *In re S-Y-G-*, 24 I. & N. Dec. 247, 253 (B.I.A. 2007).
18 Xiao failed to submit any evidence detailing the treatment of
19 Christians at the time of his 1995 hearing. Such evidence
20 is necessary to make a comparison between those conditions
21 and those prevailing when he filed his motion. See *id.*; see
22 also *INS v. Abudu*, 485 U.S. 94, 110 (1988) ("[T]he moving
23 party bears a heavy burden."). Furthermore, the BIA
24 reasonably found that the evidence Xiao submitted, which

1 consisted of news articles published from 2004 through 2013,
2 were insufficient to establish the requisite material change
3 in conditions. For example, one article dated May 1, 2013,
4 notes that, since 1999, the United States has designated China
5 a "country of particular concern" under the International
6 Religious Freedom Act, while another reports that the harm
7 Christians in China suffered in 2012 was "not as gravely
8 serious" as that observed 30 years earlier. The tension
9 between the two tends to undercut Xiao's claim. Further,
10 although the evidence Xiao provided discusses general
11 interference by the Chinese government with unregistered
12 religious groups, it reports no incidents of officials
13 targeting Christians in Xiao's home province of Fujian. See
14 *Jian Hui Shao*, 546 F.3d at 142, 149 (finding no error in the
15 BIA's requirement that an applicant demonstrate that
16 officials in his local area enforce a government policy in a
17 manner that would give rise to a well-founded fear of
18 persecution when the country conditions evidence demonstrates
19 local variations in enforcement).

20 Accordingly, the BIA reasonably concluded that Xiao did
21 not sufficiently demonstrate a material change in country
22 conditions in the relevant period such as would excuse his
23 motion's untimely filing. See 8 U.S.C. § 1229a(c)(7)(C); see

1 also *In re S-Y-G-*, 24 I. & N. Dec. at 257.²

2 Xiao's request for humanitarian parole did not render
3 him eligible for an exception to the time limitation on his
4 motion, see 8 U.S.C. § 1229a(c)(7)(C); 8 C.F.R.
5 § 1003.2(c)(3). Rather, "his motion to reopen for
6 humanitarian parole could only be considered upon exercise of
7 the Agency's *sua sponte* authority," since exercise of that
8 authority is not subject to the time limitation, *Mahmood v.*
9 *Holder*, 570 F.3d 466, 469 (2d Cir. 2009); see also 8 C.F.R.
10 § 1003.2(a). We lack jurisdiction to review the agency's
11 decision declining to reopen proceedings *sua sponte*. See *Ali*
12 *v. Gonzales*, 448 F.3d 515, 518 (2d Cir. 2006). Although we
13 may remand "where the Agency may have declined to exercise
14 its *sua sponte* authority because it misperceived the legal
15 background and thought, incorrectly, that a reopening would
16 necessarily fail," *Mahmood*, 570 F.3d at 469, no such
17 misperception infected the BIA's decision here. The BIA
18 concluded in its discretion that Xiao's biannual medical
19 appointments to monitor him for recurrence of his cancer did

2 In view of this conclusion, we do not reach the BIA's alternative basis for denying Xiao's motion based on his religious practice: his failure to establish prima facie eligibility for relief. See *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("As a general rule courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach.").

1 not warrant reopening, see *In re G-D-*, 22 I. & N. Dec. 1132,
2 1133-34 (B.I.A. 1999) (providing that *sua sponte* authority is
3 "not . . . a general remedy for any hardships created by
4 enforcement of the . . . limits in the motions regulations,
5 but as an extraordinary remedy reserved for truly exceptional
6 situations."). We may not revisit that conclusion on
7 petition for review.

8 For the foregoing reasons, the petition for review is
9 DENIED. As we have completed our review, any stay of removal
10 that the Court previously granted in this petition is VACATED,
11 and any pending motion for a stay of removal in this petition
12 is DISMISSED as moot. Any pending request for oral argument
13 in this petition is DENIED in accordance with Federal Rule of
14 Appellate Procedure 34(a)(2), and Second Circuit Local Rule
15 34.1(b).

16 FOR THE COURT:
17 Catherine O'Hagan Wolfe
18 Clerk of Court
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