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Sample Stay of Removal

**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
BOARD OF IMMIGRATION APPEALS**

<u>In the Matter of:</u>)	DETAINED
)	
Jin LIN)	A xxx-xxx-xxx
)	
<u>Respondents,</u>)	In Removal Proceedings,

**RESPONDENT’S MOTION TO STAY REMOVAL PENDING ADJUDICATION OF HIS
MOTION TO REOPEN**

Mr. Lin respectfully requests that the Board grant a stay of removal pending adjudication of his motion to reopen to allow him to apply for asylum, withholding of removal, and CAT based on changed country conditions. The motion to reopen is being filed at the same time as this request for a stay of removal.

Relevant Facts:

Mr. Lin is a native and citizen of China. He has resided in the United States since January 2014.

Mr. Lin is a devout Christian. He practiced his religion in China at unregistered religious gatherings. He was baptized while in China. (Exhibit A, baptism certificate). In October 2013,



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Mr. Lin was arrested while attending an unregistered religious gathering. He was detained one night and forced to pay a 5,000 RMB fine in order to be released. He also had to sign a statement that he would not practice his religion at any unregistered gatherings. He stopped practicing his religion in China and left for the United States two months later.

Mr. Lin has practiced his religion since coming to the United States. He practices his religion by attending church every week. (Exhibit B, letter from Pastor). He also attends Bible study one time per week and participates in religious activities in the community. (Exhibit B).

Mr. Lin applied for asylum within one year of arriving in the United States. Mr. Lin was placed in removal proceedings after his application for asylum was referred to the Immigration Court by United States Citizenship and Immigration Services. He renewed his application for asylum and applied for withholding of removal and CAT.

On July 8, 2017, the Immigration Judge denied Mr. Lin's application for asylum. The IJ concluded that the incidents in China did not amount to past persecution. The IJ also concluded that Mr. Lin does not have a well-founded fear of persecution because many Christians are able to freely practice their religion in China without government interference.

On June 6, 2018, Mr. Lin's appeal to the Board of Immigration Appeals was dismissed.

Mr. Lin was detained by ICE on August 1, 2019. He is now filing a motion to reopen based on changed country conditions in China for Christians.

Argument:



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Mr. Lin contends that a stay of removal is warranted pending disposition of his motion to reopen. Mr. Lin has a likelihood of success on the merits of his motion. He faces persecution if removed to China.

Mr. Lin incorporates the arguments contained in the motion to reopen. Mr. Lin filed a motion to reopen with the Board of Immigration Appeals based on changed country conditions. His motion to reopen is likely to be granted on the merits since conditions in China have drastically changed since the implementation of the new religious regulations in February 2018.

A motion to reopen generally must be filed within 90 days of the final administrative removal order. 8 U.S.C. § 1229a(c)(7)(c)(i). Although the motion is being filed outside the 90-day period for filing motions to reopen, Mr. Lin contends that as a result of the change in country conditions, the time limitations do not bar his Motion. *See* 8 C.F.R. § 1003.2(c)(3)(ii); *Poradisova v. Gonzales*, 420 F.3d 70, 81 (2d. Cir. 2005); *Niyibizi v. Mukasey*, 300 Fed. Appx. 371, 374 (6th Cir. 2014). A State Department Country Report that documents worsening conditions in an alien's country of nationality can establish prima facie eligibility for asylum. *Poradisova*, 420 F.3d at 81. The changed country conditions exception also applies to motions to reopen CAT claims. *Go v. Holder*, 744 F.3d 604, 609 (9th Cir. 2014).

When reviewing a motion to reopen based on changed conditions in the country of nationality, there are two principal considerations. First, the individual must demonstrate that the conditions could not have been previously discovered or presented at her prior hearing. Second, the condition must affect the likelihood that the individual would be harmed on account of an



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enumerated ground. *See Matter of J-J-*, 21 I&N Dec. 976, 981-82 (BIA 1997). The new evidence must be qualitatively different than the evidence presented at the prior hearing. *Niyibizi v. Mukasey*, 300 Fed. Appx. 371, 374 (6th Cir. 2014); *Bushati v. Holder*, 458 Fed. Appx. 457, 459 (6th Cir. 2012); *Salim v. Lynch*, 831 F.3d 1133 (9th Cir. 2016); *Agonafer v. Sessions*, 859 F.3d 1198 (9th Cir. 2017).

Mr. Lin is submitting evidence that shows a significant increase in harm faced by Chinese Christians and that the government is working to eradicate the ability to freely practice religion through its Sinicization campaign. This evidence includes but is not limited to the 2018 International Religious Freedom Report (Exhibit C), the 2018 Human Rights Report (Exhibit D), Written Testimony by Dr. Bob Fu (Exhibit E), and articles detailing religious persecution in China since the start of 2018 (Exhibit F, pp. 153-216). More specifically, Bob Fu, ChinaAid Founder, states in a September 2018 article that religious freedom is at its worst level since the Cultural Revolution. (Exhibit E, p. 141).

Conditions have drastically deteriorated for Christians in China. A May 2019 article from the Wall Street Journal states that earlier in the month, the regime launched a nationwide campaign to eradicate house churches. (Exhibit F, p. 182). Mr. Lin submitted an article from October 2019 talking about U.S. officials' condemnation of the imprisonment of a Chinese Pastor in which the State Department commented, "this is yet another example of Beijing's intensification of repression of Chinese Christians and members of other religious groups." (Exhibit F, p. 202). Additionally, another article states that China will soon implement harsh



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new measures requiring all religious personnel to support and implement total submission to the Chinese Communist Party. (Exhibit F, p. 218). Under these rules, every aspect of religious life is subject to the government’s approval. (Exhibit F, pp. 216-18). [E]xperts and activists say the Chinese government is now waging the most severe suppression of Christianity in the country since religious freedoms were granted by the Chinese constitution in 1982.” (Exhibit F, pp. 214-15). The articles show that religious practitioners are subject to arrest, detention, persecution, and torture. (Exhibit F). They are being coerced to renounce their religious beliefs. (Exhibit F, p. 176).

The evidence is material. The evidence relates to Mr. Lin’s fear of returning due to being a practicing Christian. He would practice upon return to China and as a result, would face harm. The new evidence shows the likelihood of persecution and torture in light of his religious beliefs.

The evidence presented is also new and previously unavailable. The evidence shows the significant deterioration of religious freedom in China, which has gotten much worse since the February 2018 regulations. This is reflected in a comparison between the background documents in the record in the prior case and the new evidence submitted.

Mr. Lin has set forth a prima facie case for asylum, withholding of removal, and protection under the Convention Against Torture. Mr. Lin faces persecution and torture upon his return to China. Christians are being targeted, especially in light of the February 2018 regulations. Mr. Lin contends that there is a pattern or practice of persecution against Christians in China. Additionally, it is more likely than not Mr. Lin would be tortured upon his return to



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China. Religious adherents face torture. (Exhibit D, p. 118 (stating that religious groups reported torture and deaths)). Mr. Lin contends that if he practices his religion, he would be subject to persecution.

Mr. Lin has produced evidence of material changed country conditions in China. Therefore, his case should be reopened to allow him to pursue asylum, withholding of removal and protection under the Convention Against Torture. He has demonstrated a likelihood of success on the merits. Removing Mr. Lin while his motion is pending would make his motion moot. Additionally, he would be removed to a country where he reasonably fears being persecuted and/or tortured. In light of these circumstances, a stay of removal is warranted.

CONCLUSION

In light of the foregoing, Respondent respectfully requests a stay of removal pending adjudication of his motion to reopen.

Respectfully submitted,



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Jin LIN)	A xxx-xxx-xxx
)	
Respondents,)	In Removal Proceedings,

CERTIFICATE OF SERVICE

On August 19, 2019, I, _____, served a copy of Respondent’s Motion to Stay to:

DHS/ICE Office of Chief Counsel
26 Federal Plaza, Room 1130
New York, NY 10278

By FedEx Overnight Shipping

Date