

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

MAR 12 2008

MOLLY DWYER, ACTING CLERK
U.S. COURT OF APPEALS

AI HUA DONG,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney
General,

Respondent.

No. 05-74917

Agency No. A72-095-598

MEMORANDUM *

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted February 26, 2008 **

Before: BEEZER, FERNANDEZ and McKEOWN, Circuit Judges.

Ai Hua Dong, a native and citizen of China, petitions for review of the Board of Immigration Appeals' ("BIA") order denying her motion to reconsider its

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

order denying her second motion to reopen proceedings based on changed country conditions. To the extent we have jurisdiction, it is under 8 U.S.C. § 1252. We review for an abuse of discretion, *see Oh v. Gonzales*, 381 F.3d 611, 612 (9th Cir. 2005), and we deny in part and dismiss in part the petition for review.

The BIA did not abuse its discretion in denying Dong's motion to reconsider because she failed to show an error of fact or law in the BIA's prior decision denying her second motion to reopen. *See* 8 C.F.R. § 1003.2(b)(1). Her second motion to reopen was untimely, *see* 8 C.F.R. § 1003.2(c)(2), and the birth of her two children in the United States was insufficient to establish changed circumstances in China, *see He v. Gonzales*, 501 F.3d 1128, 1132 (9th Cir. 2007) (holding that the birth of children outside the country of origin is a change in personal circumstances that is not sufficient to establish changed circumstances in the country of origin under 8 C.F.R. § 1003.2(c)(3)(ii)).

We lack jurisdiction to review the BIA's decision not to invoke its sua sponte authority to reopen proceedings under 8 C.F.R. § 1003.2(a). *See Ekimian v. INS*, 303 F.3d 1153, 1159 (9th Cir. 2002).

PETITION FOR REVIEW DENIED in part; DISMISSED in part.