

Case Summary: Immigration Law Advisor

U.S. Department of Justice, Executive Office for Immigration Review

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Second Circuit: **Weinong Lin v. Holder**, No. 12-179-ag, 2014 WL 4067162 (2d Cir. Aug. 19, 2014): The Second Circuit granted a petition for review of the Board's denial of an asylum application as untimely and remanded for further consideration. The petitioner, a national of China, claimed that he met the "changed circumstances" exception for late filing, based on his public political activism in the U.S. as a member of an organization called the China Democratic Party World Union. The Immigration Judge found that these new facts were not "changed circumstances," but rather "another aspect of the same reason that the applicant always had to apply for asylum." The Board affirmed. The court acknowledged that the petitioner's subjective anti-communist political beliefs, which he held privately in China, remained unchanged. It found, however, that his engagement in public activism for the first time constituted a change in objective circumstances consistent with 8 C.F.R. § 1208.4(a)(4)(i)(B), which states that "changed circumstances" include activities an applicant becomes involved in outside the country of feared persecution. The court cited to a footnote in *Matter of C-W-L-*, interpreting the regulations to apply to "changes in objective circumstances relating to the applicant." 24 I&N Dec. 346, 352 n.9 (BIA 2007). The court found the Board's determination in this case to be "an unexplained, and therefore impermissible, departure from agency precedent." The court invited the Board on remand to provide "precedential consideration of various unresolved issues that inhere in this case." Specifically, the court identified the need to provide a framework for assessing claims in which an asylum applicant "initiates or intensifies public opposition" for the first time after arriving in the U.S., including guidance in assessing credibility in such claims and in determining the risk of persecution when such a claim is denied. The court additionally asked the Board to consider the asylum statute's concern (if any) with sincerity in such claims, including whether there is "a presumption one way or another."