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**UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT**

**SUMMARY ORDER**

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO SUMMARY ORDERS FILED AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY THIS COURT'S LOCAL RULE 32.1 AND FEDERAL RULE OF APPELLATE PROCEDURE 32.1. IN A BRIEF OR OTHER PAPER IN WHICH A LITIGANT CITES A SUMMARY ORDER, IN EACH PARAGRAPH IN WHICH A CITATION APPEARS, AT LEAST ONE CITATION MUST EITHER BE TO THE FEDERAL APPENDIX OR BE ACCOMPANIED BY THE NOTATION: "(SUMMARY ORDER)." A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF THAT SUMMARY ORDER TOGETHER WITH THE PAPER IN WHICH THE SUMMARY ORDER IS CITED ON ANY PARTY NOT REPRESENTED BY COUNSEL UNLESS THE SUMMARY ORDER IS AVAILABLE IN AN ELECTRONIC DATABASE WHICH IS PUBLICLY ACCESSIBLE WITHOUT PAYMENT OF FEE (SUCH AS THE DATABASE AVAILABLE AT [HTTP://WWW.CA2.USCOURTS.GOV/](http://www.ca2.uscourts.gov)). IF NO COPY IS SERVED BY REASON OF THE AVAILABILITY OF THE ORDER ON SUCH A DATABASE, THE CITATION MUST INCLUDE REFERENCE TO THAT DATABASE AND THE DOCKET NUMBER OF THE CASE IN WHICH THE ORDER WAS ENTERED.

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 1<sup>st</sup> day of July, two thousand and nine.

PRESENT:

HON. GUIDO CALABRESI,  
HON. ROBERT D. SACK,  
*Circuit Judges,*  
HON. EDWARD R. KORMAN,<sup>1</sup>  
*Judge.*

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JAWAID IQBAL,

*Petitioner,*

v.

No. 07-1719-ag(L), 07-2926-ag(CON)

ERIC H. HOLDER Jr., Attorney General of the United States,<sup>2</sup>

*Respondent.*

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<sup>1</sup> The Honorable Edward R. Korman, United States Court for the Eastern District of New York, sitting by designation.

<sup>2</sup> Pursuant to Federal Rule of Appellate Procedure 43(c)(2), Attorney General Eric H. Holder Jr. is automatically substituted for the former Attorney General as respondent in this case. The Clerk of the Court is instructed to amend the caption accordingly.

1 FOR PETITIONER: MEHREEN SHAH, New York, N.Y.

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3 FOR RESPONDENT: JUSTIN R. MARKEL, Trial Attorney, Office of Immigration  
4 Litigation (Frances W. Fraser, *on the brief*), for Gregory G. Katsas,  
5 Assistant Attorney General, Civil Division, United States  
6 Department of Justice, Washington, D.C.  
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9 **UPON DUE CONSIDERATION** of appeal Nos. 07-1719-ag, 07-2926-ag, from the judgment  
10 of the Board of Immigration Appeals it is hereby **ORDERED, ADJUDGED, and DECREED**  
11 that the petition for review is **DENIED**.  
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14 Petitioner appeals the Board of Immigration Appeals's denial of his motion to remand.  
15 We assume the parties' familiarity with the facts of the case, its procedural history, and the scope  
16 of the issues on appeal.

17 When there is a question of statutory rather than constitutional jurisdiction, we may  
18 assume hypothetical jurisdiction to hear a claim and then dispose of the claim on the merits if the  
19 result would be the same. *E.g., Conyers v. Rossides*, 558 F.3d 137, 150 (2d Cir. 2009); *Ajlani v.*  
20 *Chertoff*, 545 F.3d 229, 237-38 (2d Cir. 2008). Although the Government argues at length that  
21 8 U.S.C. § 1252(a)(2)(B) denies us statutory jurisdiction to review the determinations of the BIA  
22 and the IJ in this case, we assume hypothetical jurisdiction and conclude that the BIA did not  
23 abuse its discretion in failing to grant Petitioner's motion to reopen the removal proceedings.

24 We review the BIA's denial of a motion to remand for consideration of new evidence for  
25 abuse of discretion. *See Li Yong Cao v. U.S. Dep't of Justice*, 421 F.3d 149, 156-57 (2d Cir.  
26 2005). The BIA did not abuse its discretion in denying the motion because there was no showing  
27 that new evidence was available, and because even if the Petitioner were to meet the technical  
28 prerequisites for adjustment of status "the movant would not be entitled to the discretionary grant

1 of relief." *INS v. Abudu*, 485 U.S. 94, 105 (1988). Especially in light of Petitioner's previous  
2 conviction for conspiracy to commit marriage fraud and the IJ's finding that Petitioner lied under  
3 oath about his involvement in his brother's fraudulent marriage and therefore did not have good  
4 moral character, we find no abuse of discretion here.

5 We have reviewed all of Petitioner's claims and find them meritless. Accordingly, the  
6 petition is DENIED.

7 For the Court,  
8 CATHERINE O'HAGAN WOLFE, Clerk of Court

9 by: \_\_\_\_\_  
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