

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Alom v. Whitaker

Alom v. Whitaker, 910 F.3d 708 (2d Cir. 2018) · No. 17-2627 (L), 18-1384 (Con) · Decided December 17, 2018

SUMMARY

The Second Circuit held that the Board of Immigration Appeals (BIA) must review de novo the ultimate determination of whether a non-citizen has established a good faith marriage to qualify for a waiver of the joint filing requirement under 8 U.S.C. § 1186a(c)(4)(B), because it is a mixed question of law and fact. While the BIA properly reviews an immigration judge's factual findings for clear error, it must independently evaluate whether those facts satisfy the legal standard for a good faith marriage. The court remanded for the BIA to apply the correct de novo standard, and denied the petition as to the BIA's denial of reopening and reconsideration because the petitioner abandoned that challenge by failing to meaningfully argue it.

CASE DETAILS

COURT	United States Court of Appeals for the Second Circuit
WRITING FOR THE COURT	HALL; LOHIER; RESTANI
JURISDICTION	Federal
DECIDED	December 17, 2018
DOCKET	17-2627 (L), 18-1384 (Con)
DISPOSITION	other
PROCEDURAL POSTURE	Petition for review of BIA orders affirming removal order and denying motion to reopen and reconsider.
STANDARD OF REVIEW	The BIA reviews IJ's factual findings for clear error but reviews questions of law, discretion, and judgment de novo. The court reviewed its own jurisdiction limited to constitutional claims or questions of law under 8 U.S.C. § 1252(a)(2)(B)(ii), (D).
PRECEDENTIAL VALUE	Published
PARTIES	MD Titumir Alom v. Matthew G. Whitaker, Acting United States Attorney General

TOPICS

standard of review

appellate procedure

administrative law

judicial review of agency action

removal proceedings

PRACTICE AREAS

Immigration

Administrative Law

QUESTIONS PRESENTED

1. Whether the BIA applied the wrong standard of review in considering the IJ's good faith marriage determination.
2. Whether the BIA abused its discretion when it declined to reopen or reconsider its decision.

HOLDINGS

1. The BIA erred by applying only clear error review to the ultimate determination of whether the petitioner established a good faith marriage. The determination is a mixed question of law and fact subject to de novo review.
2. The petitioner abandoned any challenge to the BIA's denial of reopening and reconsideration by failing to assert a meaningful argument in his brief.

KEY QUOTATIONS

“In determining whether established facts are sufficient to meet a legal standard, the BIA has an obligation to conduct an independent evaluation of the evidence in the record under a de novo standard of review.” (at 710)

“Where the Board reviews . . . a mixed question of law and fact . . . the Board will defer to the factual findings of the immigration judge unless clearly erroneous, but the Board members will retain their ‘independent judgment and discretion,’ subject to the applicable governing standards, regarding the review of pure questions of law and the application of the standard of law to those facts.” (at 710)

“In the present case, the BIA expressly stated that ‘[w]hether a marriage was entered into in good faith is a factual question’ subject to clear error review.” (at 711)

“But these statements conflict with the BIA's published authority holding that where the question is whether established facts meet a legal standard, the BIA may weigh the evidence differently than the IJ.” (at 711)

FACTUAL BACKGROUND

Alom, a native of Bangladesh, entered the U.S. as a conditional lawful permanent resident in May 2005 based on his marriage to Shahrine Naz, a U.S. citizen. They married in Bangladesh in 2003, divorced in December 2005, six months after Alom's entry. Alom sought a waiver of the joint filing requirement to remove conditions on his residency, claiming the marriage was entered in good faith. The IJ found the marriage not bona fide, citing lack of cohabitation, joint finances, children, and evidence of the wedding, and adverse credibility determinations.

PROCEDURAL HISTORY

The petitioner entered the United States as a conditional lawful permanent resident based on his marriage to a U.S. citizen. After divorce, he sought a waiver of the joint filing requirement to remove conditions on his residency. The IJ denied the waiver, finding the marriage was not entered in good faith. The BIA affirmed the IJ's decision, applying clear error review. The BIA also denied the petitioner's motion to reopen and reconsider. The petitioner sought review in the Second Circuit.

DISPOSITION

other

REMAND INSTRUCTIONS

Remand to the BIA with instructions to apply the appropriate de novo standard of review to the IJ's denial of a good faith marriage waiver.

CASES CITED

- Boluk v. Holder, 642 F.3d 297 (2d Cir. 2011)
- Zaman v. Mukasey, 514 F.3d 233 (2d Cir. 2008)
- Contreras-Salinas v. Holder, 585 F.3d 710 (2d Cir. 2009)
- Khan v. Gonzales, 495 F.3d 31 (2d Cir. 2007)
- Upatcha v. Sessions, 849 F.3d 181 (4th Cir. 2017)
- In re A-S-B-, 24 I. & N. Dec. 493 (B.I.A. 2008)
- In re Z-Z-O-, 26 I. & N. Dec. 586 (B.I.A. 2015)
- In re Laureano, 19 I. & N. Dec. 1 (B.I.A. 1983)
- In re Moody, 2012 BIA LEXIS 40 (B.I.A. Jan. 20, 2012)
- Moody v. Holder, 523 F. App'x 88 (2d Cir. 2013)
- In re Chhay, 2010 WL 1747403 (B.I.A. Apr. 15, 2010)
- Chowdhoury v. Holder, 494 F. App'x 182 (2d Cir. 2012)
- In re Patel, 2008 WL 5025243 (B.I.A. Nov. 15, 2008)
- Yan Chen v. Gonzales, 417 F.3d 268 (2d Cir. 2005)
- Mirzoyan v. Gonzales, 457 F.3d 217 (2d Cir. 2006)
- Paloka v. Holder, 762 F.3d 191 (2d Cir. 2014)
- Yueqing Zhang v. Gonzales, 426 F.3d 540 (2d Cir. 2005)