

UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

Santos Guaman v. Sessions

Santos Guaman v. Sessions, 891 F.3d 12 (1st Cir. 2018) · No. No. 16-2204 · Decided May 23, 2018

SUMMARY

The First Circuit vacated and remanded the BIA's denial of asylum, holding that the BIA and IJ erred as a matter of law by failing to apply the child-specific standard for evaluating past persecution claims—requiring that abuse be assessed from the child's perspective—and by relying on adult asylum standards. The court also found that the BIA failed to address the petitioner's argument that the Ecuadorian government did not actively enforce constitutional protections against discrimination, which is relevant to the government-inaction element of persecution. The case was remanded for the BIA to apply the correct childhood standard and to consider the government-inaction argument in the first instance.

CASE DETAILS

COURT	United States Court of Appeals for the First Circuit
WRITING FOR THE COURT	Thompson; Torruella; Kayatta
JURISDICTION	Federal
DECIDED	May 23, 2018
DOCKET	No. 16-2204
DISPOSITION	vacated_and_remanded
PROCEDURAL POSTURE	Petition for review of a final order of the Board of Immigration Appeals denying asylum.
STANDARD OF REVIEW	Substantial evidence for factual findings, de novo for legal questions.
PRECEDENTIAL VALUE	Published
PARTIES	Manuel Santos Guaman v. Jefferson B. Sessions III, Attorney General of the United States

TOPICS

- administrative law
- judicial review of agency action
- standard of review
- statutory interpretation
- burden of proof

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the Board of Immigration Appeals erred in failing to apply the child-specific standard for past persecution when evaluating the experiences of a petitioner who suffered abuse as a child.
2. Whether the Board of Immigration Appeals erred in concluding that Santos Guaman did not have a well-founded fear of future persecution.

HOLDINGS

1. The BIA and IJ erred as a matter of law in failing to apply the childhood standard when evaluating Santos Guaman's past persecution claim, as the abuse occurred when he was a child.

KEY QUOTATIONS

“Where the events that form the basis of a past persecution claim were perceived when the petitioner was a child, the fact-finder must ‘look at the events from [the child’s] perspective, [and] measure the degree of [his] injuries by their impact on [a child] of [his] age.’” (10-11)

“‘[P]ast persecution requires that the totality of a petitioner’s experiences add up to more than mere discomfort, unpleasantness, harassment, or unfair treatment.’” (10)

“Persecution normally involves severe mistreatment at the hands of [a petitioner’s] own government, but it may also arise where non-governmental actors . . . are in league with the government or are not controllable by the government.” (9)

FACTUAL BACKGROUND

Santos Guaman, an indigenous Quiché from Ecuador, suffered severe abuse as a child. From age 5, he was chased, punched, stabbed with pencils, thrown stones at, whipped with electrical cords, and had his hair pulled by students. Teachers participated in the abuse, whipping him, forcing him to stand for long periods, and preventing him from eating. They mocked him for not speaking Spanish and wearing traditional clothing. He dropped out after two years. As a teenager, he worked and endured harassment and threats from bosses and coworkers. He came to the U.S. at age 16. He filed for asylum in 2012 after removal proceedings.

PROCEDURAL HISTORY

The Immigration Judge denied Santos Guaman's asylum application, finding he did not suffer past persecution or have a well-founded fear of future persecution. The Board of Immigration Appeals affirmed. Santos Guaman petitioned for review.

DISPOSITION

vacated_and_remanded

REMAND INSTRUCTIONS

On remand, the BIA should apply the correct child-specific standard to determine whether Santos Guaman suffered past persecution. Additionally, the BIA should address Santos Guaman's argument that the Ecuadorian government does not actively enforce constitutional protections for indigenous persons, leading to state inaction.

CASES CITED

- Paiz-Morales v. Lynch, 795 F.3d 238 (1st Cir. 2015)
- Renaut v. Lynch, 791 F.3d 163 (1st Cir. 2015)
- Singh v. Holder, 750 F.3d 84 (1st Cir. 2014)
- Jianli Chen v. Holder, 703 F.3d 17 (1st Cir. 2012)
- Vasili v. Holder, 732 F.3d 83 (1st Cir. 2013)
- Lumaj v. Gonzales, 446 F.3d 194 (1st Cir. 2006)
- Ahmed v. Holder, 765 F.3d 96 (1st Cir. 2014)
- Olujoke v. Gonzales, 411 F.3d 16 (1st Cir. 2005)
- Ayala v. Holder, 683 F.3d 15 (1st Cir. 2012)
- Da Silva v. Ashcroft, 394 F.3d 1 (1st Cir. 2005)
- Nikijuluw v. Gonzales, 427 F.3d 115 (1st Cir. 2005)
- Albathani v. INS, 318 F.3d 365 (1st Cir. 2003)
- Harutyunyan v. Gonzales, 421 F.3d 64 (1st Cir. 2005)
- Alibeaj v. Gonzales, 469 F.3d 188 (1st Cir. 2006)
- Guzman v. INS, 327 F.3d 11 (1st Cir. 2003)
- Sok v. Mukasey, 526 F.3d 48 (1st Cir. 2008)
- Lopez de Hincapie v. Gonzales, 494 F.3d 213 (1st Cir. 2007)
- Ivanov v. Holder, 736 F.3d 5 (1st Cir. 2013)
- Rebenko v. Holder, 693 F.3d 87 (1st Cir. 2012)
- Ordonez-Quino v. Holder, 760 F.3d 80 (1st Cir. 2014)
- Liu v. Ashcroft, 380 F.3d 307 (7th Cir. 2004)
- Hernandez-Ortiz v. Gonzales, 496 F.3d 1042 (1st Cir. 2007)
- Awad v. Gonzales, 463 F.3d 73 (1st Cir. 2006)
- In Re A-M-, 23 I. & N. Dec. 737 (BIA 2005)
- Aguilar-Escoto v. Sessions, 874 F.3d 334 (1st Cir. 2017)
- Kozak v. Gonzales, 502 F.3d 34 (1st Cir. 2007)
- Castañeda-Castillo v. Gonzales, 488 F.3d 17 (1st Cir. 2007)