

# SUPREME COURT OF THE UNITED STATES

## Immigration and Naturalization Service v. Abudu

485 U.S. 94 (1988) · No. No. 86-1128 · Decided March 1, 1988

### SUMMARY

The Supreme Court held that a court of appeals must review the Board of Immigration Appeals' denial of a motion to reopen deportation proceedings under an abuse-of-discretion standard. The Court concluded that the Board did not abuse its discretion in finding that the respondent had not reasonably explained his failure to apply for asylum during the original deportation proceedings.

### CASE DETAILS

|                       |                                                                                                                                                                                                                                                               |
|-----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of the United States                                                                                                                                                                                                                            |
| WRITING FOR THE COURT | Justice Stevens                                                                                                                                                                                                                                               |
| JURISDICTION          | Federal                                                                                                                                                                                                                                                       |
| DECIDED               | March 1, 1988                                                                                                                                                                                                                                                 |
| DOCKET                | No. 86-1128                                                                                                                                                                                                                                                   |
| DISPOSITION           | reversed                                                                                                                                                                                                                                                      |
| PROCEDURAL POSTURE    | The Immigration and Naturalization Service sought review of a Ninth Circuit judgment reversing the Board of Immigration Appeals' denial of Abudu's motion to reopen deportation proceedings so that he could apply for asylum and withholding of deportation. |
| STANDARD OF REVIEW    | Abuse of discretion                                                                                                                                                                                                                                           |
| PRECEDENTIAL VALUE    | Published Supreme Court precedent                                                                                                                                                                                                                             |
| PARTIES               | Immigration and Naturalization Service v. Abudu                                                                                                                                                                                                               |

### TOPICS

- removal proceedings
- asylum
- standard of review
- appellate procedure
- administrative law

### PRACTICE AREAS

- Immigration law
- Administrative law
- Appellate procedure

### QUESTIONS PRESENTED

1. What standard of review applies when the BIA denies a motion to reopen deportation proceedings because the alien failed to reasonably explain the failure to seek asylum initially or failed to present previously unavailable and material evidence?
2. Whether the BIA abused its discretion in concluding that Abudu had not reasonably explained his failure to apply for asylum before completion of the original deportation proceedings.

## **HOLDINGS**

1. A court of appeals must review the BIA's denial of a motion to reopen under 8 C.F.R. §§ 3.2 or 208.11 for abuse of discretion when the denial rests on the alien's failure to present previously unavailable, material evidence or to reasonably explain the failure to seek asylum initially.
2. The BIA did not abuse its discretion in finding that Abudu had not reasonably explained his failure to seek asylum during the original deportation proceeding; the Ninth Circuit's reversal of the denial of reopening was therefore improper.

## **KEY QUOTATIONS**

*“We decide today that the appropriate standard of review of such denials is abuse of discretion.”* (485 U.S. at 104-105)

*“We hold today that such decisions are subject to an abuse-of-discretion standard of review.”* (485 U.S. at 107)

*“We have never suggested that all ambiguities in the factual averments must be resolved in the movant's favor, and we have never analogized such a motion to a motion for summary judgment.”* (485 U.S. at 109)

## **FACTUAL BACKGROUND**

Abudu, a Ghanaian citizen who had entered the United States as a student, overstayed his visa after becoming a licensed physician and marrying an American citizen. He pleaded guilty in 1981 to attempting to obtain narcotic drugs by fraud and was later ordered deported. Although he had been given an opportunity during the deportation proceedings to apply for asylum, he expressly declined. He later moved to reopen based principally on Ghanaian political persecution of his brother and associates and a 1984 visit from a former acquaintance who had become a Ghanaian government official.

## **PROCEDURAL HISTORY**

An Immigration Judge ordered Abudu deported in 1982, and the BIA dismissed his appeal in 1984. While his petition for review of the deportation order was pending, Abudu moved to reopen to pursue asylum and withholding of deportation. The BIA denied reopening because he had not reasonably explained his failure to seek asylum earlier and had not established a prima facie case. The Ninth Circuit affirmed the deportation order but reversed the denial of reopening and remanded for an evidentiary hearing. The Supreme Court granted certiorari and reversed the portion of the Ninth Circuit's judgment concerning reopening.

## **DISPOSITION**

reversed

#### CASES CITED

- INS v. Jong Ha Wang, 450 U.S. 139 (1981)
- INS v. Rios-Pineda, 471 U.S. 444 (1985)
- INS v. Bagamasbad, 429 U.S. 24 (1976)
- INS v. Stevic, 467 U.S. 407 (1984)
- INS v. Phinpathya, 464 U.S. 183 (1984)
- INS v. Cardoza-Fonseca, 480 U.S. 421 (1987)
- Maroufi v. INS, 772 F.2d 597 (9th Cir. 1985)
- U.S. v. Diebold, Inc., 369 U.S. 654 (1962)
- Bowman Transportation, Inc. v. Arkansas-Best Freight System, Inc., 419 U.S. 281 (1974)
- Taylor v. Illinois, 484 U.S. 400 (1988)
- Aviles-Torres v. INS, 790 F.2d 1433 (9th Cir. 1986)
- Bahramnia v. INS, 782 F.2d 1243 (5th Cir. 1986)
- Ananeh-Firempong v. INS, 766 F.2d 621 (1st Cir. 1985)
- Duran v. INS, 756 F.2d 1338 (9th Cir. 1985)
- Samimi v. INS, 714 F.2d 992 (9th Cir. 1983)
- Torres-Hernandez v. INS, 812 F.2d 1262 (9th Cir. 1987)
- Sakhavat v. INS, 796 F.2d 1201 (9th Cir. 1986)

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