

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Khatun v. Filip

308 F. App'x 545 (2d Cir. 2009) · Decided January 30, 2009

SUMMARY

The Second Circuit denied Amina Khatun’s petition for review of the BIA’s denial of her motion to reconsider. The court held that Khatun waived any challenge to the decision properly before the court because her brief addressed the BIA’s earlier denial of her motion to reopen, and it dismissed her pending motion for a stay of removal as moot.

CASE DETAILS

COURT	United States Court of Appeals for the Second Circuit
JURISDICTION	Federal
DECIDED	January 30, 2009
DISPOSITION	denied
PROCEDURAL POSTURE	Petition for review of the Board of Immigration Appeals' denial of a motion to reconsider.
STANDARD OF REVIEW	The court reviewed the BIA's denial of the motion to reconsider and considered whether the BIA abused its discretion.
PRECEDENTIAL VALUE	Nonprecedential summary order
PARTIES	Amina Khatun v. Filip

TOPICS

removal proceedings appellate procedure immigration mootness standard of review

PRACTICE AREAS

Immigration Appellate Procedure Administrative Law

QUESTIONS PRESENTED

1. Whether the Second Circuit could review challenges to the BIA's denial of a motion to reopen when Khatun timely petitioned for review only of the BIA's denial of reconsideration.
2. Whether Khatun waived any challenge to the BIA decision properly before the court by failing to raise arguments addressing the denial of reconsideration.

3. Whether Khatun's pending motion for a stay of removal should be dismissed as moot after the court completed its review.

HOLDINGS

1. The court's review was limited to the BIA's denial of Khatun's motion to reconsider because that was the only decision from which she filed a timely petition for review; the earlier denial of her motion to reopen was not properly before the court.
2. Khatun waived any challenge to the BIA's denial of her motion to reconsider by failing to address that decision in her brief, requiring denial of the petition for review.
3. Even absent waiver, the BIA did not abuse its discretion in denying reconsideration where Khatun merely repeated arguments that the BIA had previously considered and rejected.
4. Khatun's pending motion for a stay of removal was dismissed as moot after the court completed its review.

KEY QUOTATIONS

“Because Khatun has effectively waived any challenge to the decision we are “empowered to review,” her petition for review must be denied.” (545)

FACTUAL BACKGROUND

Amina Khatun, a native and citizen of Bangladesh, sought review of the BIA's denial of her motion to reconsider. Her appellate brief challenged the BIA's findings in denying her motion to reopen rather than the November 2007 reconsideration decision. The court noted that the reconsideration motion merely repeated arguments previously considered and rejected by the BIA.

PROCEDURAL HISTORY

The BIA denied Khatun's motion to reopen and later denied her motion to reconsider on November 30, 2007. Khatun timely petitioned the Second Circuit for review only of the denial of reconsideration, but her brief challenged the earlier denial of reopening instead. The court held that she waived any challenge to the decision properly before it, denied the petition for review, and dismissed her pending motion for a stay of removal as moot.

DISPOSITION

denied

CASES CITED

- Ke Zhen Zhao v. U.S. Dep't of Justice, 265 F.3d 83, 89-90 (2d Cir. 2001)
- Yueqing Zhang v. Gonzales, 426 F.3d 540, 541 n. 1, 545 n. 7 (2d Cir. 2005)
- Nwogu v. Gonzales, 491 F.3d 80, 84 (2d Cir. 2007)
- Jin Ming Liu v. Gonzales, 439 F.3d 109, 111 (2d Cir. 2006)

OPINION

PER CURIAM.

SUMMARY ORDER Petitioner Amina Khatun, a native and citizen of Bangladesh, seeks review of the November 30, 2007 order of the BIA denying her motion to reconsider. In re Amina Khatun, No. A97 159 819 (B.I.A. Nov. 30, 2007).

We assume the parties' familiarity with the underlying facts and procedural history of the case. Our review in this case is limited to the BIA's November 2007 denial of Khatun's motion to reconsider, because that is the only decision from which she filed a timely petition for review. See *Ke Zhen Zhao v. U.S. Dep't of Justice*, 265 F.3d 83, 89-90 (2d Cir.2001).

As the government argues, however, Khatun waives any challenge to that decision. See *Yueqing Zhang v. Gonzales*, 426 F.3d 540, 541 n. 1, 545 n. 7 (2d Cir.2005). Instead, Khatun's brief is devoted to challenging the findings the BIA made in denying her motion to reopen, a decision that is not properly before us. See *Ke Zhen Zhao*, 265 F.3d at 89-90.

Because Khatun has effectively waived any challenge to the decision we are "empowered to review," her petition for review must be denied. See *Nwogu v. Gonzales*, 491 F.3d 80, 84 (2d Cir.2007) (denying petition where applicant failed to raise "any of the issues relevant" to BIA's denial of his motion to reopen).

We note that even if Khatun had not waived such arguments, we would conclude that the BIA did not abuse its discretion in denying her motion to reconsider where she merely repeated the same arguments *546that the BIA had previously considered and rejected in denying her motion to reopen. See *Jin Ming Liu v. Gonzales*, 439 F.3d 109, 111 (2d Cir.2006).

For the foregoing reasons, the petition for review is DENIED. As we have completed our review, Khatun's pending motion for a stay of removal is DISMISSED as moot.