

UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

Chavez v. Garland

Chavez · No. No. 21-1267 · Decided October 21, 2022

SUMMARY

The United States Court of Appeals for the First Circuit reviewed Rommel Alexander Chavez’s petition challenging the denial of withholding of removal and protection under the Convention Against Torture. The court upheld the agency’s determination that Chavez had not established an actual or imputed anti-MS-13 political opinion, but rejected the categorical rule that persons incorrectly perceived to be gang members cannot constitute a particular social group. The court granted the petition in part, vacated the decision in part, and remanded for further proceedings.

CASE DETAILS

COURT	United States Court of Appeals for the First Circuit
WRITING FOR THE COURT	Howard; Gelpí; Lipez
JURISDICTION	Federal
DECIDED	October 21, 2022
DOCKET	No. 21-1267
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Petition for review of a Board of Immigration Appeals order affirming an immigration judge's denial of statutory withholding of removal and protection under the Convention Against Torture.
STANDARD OF REVIEW	The court reviewed the BIA's final agency decision, reviewing portions of the immigration judge's reasoning that the BIA adopted or deferred to. Factual findings were reviewed for substantial evidence, while the BIA's legal rejection of the proposed particular social group was reviewed de novo, subject to Chevron principles.
PRECEDENTIAL VALUE	Published First Circuit opinion; precedential unless otherwise limited by later authority.
PARTIES	Rommel Alexander Chavez v. Merrick B. Garland, United States Attorney General

TOPICS

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QUESTIONS PRESENTED

1. Whether substantial evidence supported the BIA's rejection of Chavez's withholding claim based on an actual or imputed anti-MS-13 political opinion.
2. Whether the BIA legally erred in categorically holding that Salvadorans incorrectly perceived to be gang members cannot constitute a particular social group under the INA.
3. Whether the BIA's denial of CAT protection was unsupported by substantial evidence or rested on an incorrect application of the willful-blindness and government-acquiescence standards.

HOLDINGS

1. The BIA's conclusion that Chavez would not be perceived by MS-13 to hold an anti-MS-13 political opinion, and that his withholding claim on that ground therefore failed, was supported by substantial evidence.
2. The BIA may not categorically reject a proposed particular social group consisting of persons incorrectly perceived to be gang members solely because actual gang membership cannot constitute a particular social group.
3. The BIA's denial of CAT protection was not shown to be legally erroneous or unsupported by substantial evidence. The BIA did not improperly apply willful blindness to the government's legal-responsibility-to-intervene prong.

KEY QUOTATIONS

"Therefore, even under our deferential review, we are compelled to reject as impermissible Matter of E-A-G-'s holding that a group made up of those who are incorrectly perceived to be members of a gang is categorically barred from recognition as a particular social group under the INA." (18-19)

"We thus remand for the BIA to consider in the first instance whether Chavez's proposed social group satisfies the requirements for constituting a particular social group under the INA to which he belongs." (19-20)

"For the foregoing reasons, we grant in part the petition for review, vacate in part the order of the BIA, and remand the case to the BIA for further proceedings consistent with this opinion." (29)

FACTUAL BACKGROUND

Chavez, a citizen of El Salvador, lived in the United States from 1997 to 2012 and was removed to El Salvador in May 2012 after an earlier asylum application was denied. He testified credibly about repeated violence by Salvadoran police, including being shot as a teenager, and threats and assaults by MS-13 based on his opposition to the gang, his reporting of criminal activity, and a tattoo associated with the rival Mara 18 gang. After returning to El Salvador in 2012, he received threats and left for the United States approximately two months later because

he feared MS-13 would kill him. He sought withholding of removal based on imputed Mara 18 membership and actual or imputed anti-MS-13 political opinion, as well as CAT protection based on feared torture by police or MS-13 with government acquiescence.

PROCEDURAL HISTORY

Chavez was placed in withholding-only proceedings in March 2020 and applied for withholding of removal under the Immigration and Nationality Act and protection under the CAT. The immigration judge denied relief and ordered removal, and the BIA dismissed Chavez's appeal in a written decision. Chavez petitioned the First Circuit for review. The court granted the petition in part, vacated the BIA's decision in part, and remanded for further proceedings.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The BIA must consider in the first instance whether Chavez's proposed group of Salvadorans incorrectly perceived to be gang members satisfies the requirements for a particular social group under the INA. The BIA may also consider the IJ's alternative grounds concerning future persecution and the Salvadoran government's ability and willingness to protect Chavez. The group may not be rejected solely because current or former gang members cannot constitute a particular social group.

CASES CITED

- Kalubi v. Ashcroft, 364 F.3d 1134, 1141-42 (9th Cir. 2004)
- Palma-Mazariegos v. Gonzales, 428 F.3d 30, 33 (1st Cir. 2005)
- Reynoso v. Holder, 711 F.3d 199, 205 (1st Cir. 2013)
- Bonilla v. Mukasey, 539 F.3d 72, 76, 81-82 (1st Cir. 2008)
- INS v. Elias-Zacarias, 502 U.S. 478, 481 & n.1 (1992)
- Heng v. Gonzales, 493 F.3d 46, 47-48 (1st Cir. 2007)
- Da Silva v. Ashcroft, 394 F.3d 1, 4 (1st Cir. 2005)
- Wiratama v. Mukasey, 538 F.3d 1, 3-4 (1st Cir. 2008)
- Zelaya-Moreno v. Wilkinson, 989 F.3d 190, 199-200 (2d Cir. 2021)
- Mendez-Barrera v. Holder, 602 F.3d 21, 27 (1st Cir. 2010)
- Zhakira v. Barr, 977 F.3d 60, 67 (1st Cir. 2020)
- Archila v. Holder, 495 F. App'x 98, 100 (1st Cir. 2012)
- Marquez-Paz v. Barr, 983 F.3d 564, 565 (1st Cir. 2020)
- Marín-Portillo v. Lynch, 834 F.3d 99, 101 (1st Cir. 2016)
- Paiz-Morales v. Lynch, 795 F.3d 238, 244-45 (1st Cir. 2015)
- Cantarero v. Holder, 734 F.3d 82, 84-87 (1st Cir. 2013)

- *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842-43 (1984)
- *Vasquez-Rodriguez v. Garland*, 7 F.4th 888, 898-98 (9th Cir. 2021)
- *Pirir-Boc v. Holder*, 750 F.3d 1077, 1084 (9th Cir. 2014)
- *Escamilla v. Holder*, 459 F. App'x 776, 786-87 (10th Cir. 2012)
- *Rashad v. Mukasey*, 554 F.3d 1, 6 (1st Cir. 2009)
- *Perez-Trujillo v. Garland*, 3 F.4th 10, 18, 20-21 (1st Cir. 2021)
- *Mayorga-Vidal v. Holder*, 675 F.3d 9, 20 (1st Cir. 2012)
- *Seide v. Gonzales*, 137 F. App'x 364, 369 (1st Cir. 2005)
- *In re San Juan Dupont Plaza Hotel Fire Litigation*, 994 F.2d 956, 968-69 (1st Cir. 1993)
- *Khouzam v. Ashcroft*, 361 F.3d 161, 171 (2d Cir. 2004)