

UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

Fuad Fares Fuad Said v. U.S. Attorney General

No. 21-12917, United States Court of Appeals for the Eleventh Circuit (March 24, 2022)

SUMMARY

The Eleventh Circuit held that a conviction under Fla. Stat. § 893.13(6)(a) for marijuana possession does not relate to a federally controlled substance under 21 U.S.C. § 802, because Florida's definition of marijuana includes mature stalks and fiber, which federal law expressly excludes. Applying the categorical approach, the court found that the plain language of the state statute creates a realistic probability of broader prosecution, so the petitioner did not need to produce exemplar cases to show overbreadth. Consequently, the conviction did not stop the accrual of continuous residence for cancellation of removal under INA § 240A, and the petition for review was granted and remanded.

CASE DETAILS

COURT	United States Court of Appeals for the Eleventh Circuit
WRITING FOR THE COURT	TJOFLAT; JORDAN; NEWSOM
JURISDICTION	Federal
DECIDED	March 24, 2022
DOCKET	21-12917
DISPOSITION	remanded
PROCEDURAL POSTURE	Petition for Review of a Decision of the Board of Immigration Appeals
STANDARD OF REVIEW	We review the BIA's legal determinations de novo.
PRECEDENTIAL VALUE	Published
PARTIES	Fuad Fares Fuad Said v. U.S. Attorney General

TOPICS

- removal proceedings
- cancellation of removal
- statutory interpretation
- appellate procedure
- standard of review

PRACTICE AREAS

- Immigration Law
- Criminal Law

QUESTIONS PRESENTED

1. Whether Said's conviction under Fla. Stat. § 893.13(6)(a) for possession of marijuana relates to a controlled substance as defined in 21 U.S.C. § 802, such that it prevents him from accruing the necessary seven-year period of continuous residence for cancellation of removal.

HOLDINGS

1. A violation of Fla. Stat. § 893.13(6)(a) does not relate to a controlled substance as defined under federal law because Florida's definition of marijuana includes mature stalks and fiber, which are excluded from the federal definition. Therefore, Said's conviction did not affect his ability to accrue the required seven years of continuous residence.

KEY QUOTATIONS

“Federal law defines marijuana as: [A]ll parts of the plant Cannabis sativa L., whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin. [Marijuana] does not include . . . the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination.” (at 3)

“Florida law defines marijuana as 'all parts of any plant of the genus Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin.'” (at 3-4)

“when the statutory language itself, rather than the application of legal imagination to that language, creates the realistic probability that a state would apply the statute to conduct beyond the generic definition.” (at 5)

“ignore the statutory text and construct a narrower statute than the plain language supports.” (at 8)

“the plain language of the Florida statute makes clear that it applies to conduct not covered by the federal statute.” (at 9 n.2)

FACTUAL BACKGROUND

Said, a lawful permanent resident, was convicted in 2017 of possession of marijuana under Fla. Stat. § 893.13(6)(a). He applied for cancellation of removal. The IJ and BIA denied relief, concluding that the conviction related to a controlled substance under federal law and thus stopped the clock on his continuous residence. Said had resided in the U.S. continuously for at least seven years after admission for permanent residence.

PROCEDURAL HISTORY

The BIA affirmed the Immigration Judge's denial of Said's application for cancellation of removal. Said petitions for review.

DISPOSITION

remanded

REMAND INSTRUCTIONS

Remand to the BIA for further proceedings consistent with the opinion.

CASES CITED

- *Gonzalez v. U.S. Att'y Gen.*, 820 F.3d 399 (11th Cir. 2016)
- *Delgado v. U.S. Att'y Gen.*, 487 F.3d 855 (11th Cir. 2007)
- *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984)
- *Chamu v. U.S. Att'y Gen.*, 23 F.4th 1325 (11th Cir. 2022)
- *Guillen v. U.S. Att'y Gen.*, 910 F.3d 1174 (11th Cir. 2018)
- *Gonzalez v. Duenas-Alvarez*, 549 U.S. 183 (2007)
- *Ramos v. U.S. Att'y Gen.*, 709 F.3d 1066 (11th Cir. 2013)
- *Moncrieffe v. Holder*, 569 U.S. 184 (2013)
- *Aspilaire v. U.S. Att'y Gen.*, 992 F.3d 1248 (11th Cir. 2021)
- *United States v. Vail-Bailon*, 868 F.3d 1293 (11th Cir. 2017) (en banc)
- *Pierre v. U.S. Att'y Gen.*, 879 F.3d 1241 (11th Cir. 2018)
- *Matter of Navarro Guadarrama*, 27 I. & N. Dec. 560 (BIA 2019)
- *Matter of Ferreira*, 26 I. & N. Dec. 415 (BIA 2014)
- *United States v. Eason*, 953 F.3d 1184 (11th Cir. 2020)
- *Harris v. Garner*, 216 F.3d 970 (11th Cir. 2000) (en banc)
- *Robbins v. Garrison Prop. & Cas. Ins. Co.*, 809 F.3d 583 (11th Cir. 2015)
- *Gonzalez v. Wilkinson*, 990 F.3d 654 (8th Cir. 2021)