

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Wu v. Garland

No. 18-3470, United States Court of Appeals for the Second Circuit (May 13, 2021)

SUMMARY

Wu v. Garland (2d Cir. 2021) addresses asylum and withholding of removal claims based on imputed political opinion. The court held that substantial evidence supported the BIA's finding that the petitioner failed to establish a nexus between his harm and a protected ground, where his opposition to corruption was motivated by personal compensation rather than a challenge to government authority. The case clarifies that opposition to corruption must "transcend mere self-protection" to constitute political opinion.

CASE DETAILS

COURT	United States Court of Appeals for the Second Circuit
WRITING FOR THE COURT	Raymond J. Lohier, Jr.; Joseph F. Bianco; Michael H. Park
JURISDICTION	Federal
DECIDED	May 13, 2021
DOCKET	18-3470
DISPOSITION	other
PROCEDURAL POSTURE	Petition for review of a Board of Immigration Appeals decision affirming an Immigration Judge's denial of asylum and withholding of removal.
STANDARD OF REVIEW	Substantial evidence for factual findings, de novo for questions of law. See 8 U.S.C. § 1252(b)(4)(B); Paloka v. Holder, 762 F.3d 191, 195 (2d Cir. 2014); Gjolaj v. Bureau of Citizenship & Immigration Servs., 468 F.3d 140, 143 (2d Cir. 2006).
PRECEDENTIAL VALUE	unpublished
PARTIES	Hongyu Wu v. Merrick B. Garland

TOPICS

removal proceedings

appellate procedure

standard of review

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the agency erred in finding that Wu failed to establish a nexus between the harm he suffered and a protected ground (political opinion) for asylum and withholding of removal.

HOLDINGS

1. The agency's nexus determination was supported by substantial evidence; Wu's actions were for self-protection, not political opinion, and thus the petition for review is denied.

KEY QUOTATIONS

“Opposition to corruption may constitute a political opinion where it ‘transcends mere self-protection and represents a challenge to the legitimacy or authority of the ruling regime.’” (3)

“The record reflects that Wu was targeted to cover up ‘isolated, aberrational acts of greed or malfeasance’ not because he was viewed as challenging government institutions.” (3-4)

FACTUAL BACKGROUND

Wu, a native and citizen of China, alleged that the police targeted him because he was planning to appeal a lawsuit he filed to obtain compensation for damage to his property. He claimed that his opposition to corruption constituted a political opinion. The agency found that his motivation was self-protection, not political opinion, and that the police action was to cover up isolated acts of greed, not a challenge to government institutions.

PROCEDURAL HISTORY

Wu applied for asylum and withholding of removal; the IJ denied the application; the BIA affirmed; Wu petitioned for review to the Second Circuit.

DISPOSITION

other

CASES CITED

- Xue Hong Yang v. U.S. Dep't of Justice, 426 F.3d 520, 522 (2d Cir. 2005)
- Paloka v. Holder, 762 F.3d 191, 195 (2d Cir. 2014)
- Gjolaj v. Bureau of Citizenship & Immigration Servs., 468 F.3d 140, 143 (2d Cir. 2006)
- Castro v. Holder, 597 F.3d 93, 100 (2d Cir. 2010)
- Matter of C-T-L-, 25 I. & N. Dec. 341, 348 (BIA 2010)
- Yueqing Zhang v. Gonzales, 426 F.3d 540, 547-48 (2d Cir. 2005)

OPINION

PER CURIAM.

18-3470 Wu v. Garland BIA Wright, IJ A206 291 219 UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT SUMMARY ORDER RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT=S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION “SUMMARY ORDER”).

A PARTY CITING TO A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL. 1 At a stated term of the United States Court of Appeals 2 for the Second Circuit, held at the Thurgood Marshall 3 United States Courthouse, 40 Foley Square, in the City of 4 New York, on the 13th day of May, two thousand twenty. 5 6 PRESENT: 7 RAYMOND J. LOHIER, JR., 8 JOSEPH F. BIANCO, 9 MICHAEL H. PARK, 10 Circuit Judges.

11 _____ 12 13 HONGYU WU, 14 Petitioner, 15 16 v. 18-3470 17 NAC 18 MERRICK B. GARLAND, UNITED 19 STATES ATTORNEY GENERAL, 20 Respondent. 21 _____ 22 23 FOR PETITIONER: Henry Zhang, Esq., New York, NY. 24 25 FOR RESPONDENT: Brian M. Boynton, Acting 26 Assistant Attorney General; Carl 27 McIntyre, Assistant Director; 28 Brooke Marie Maurer, Trial 29 Attorney, Office of Immigration 30 Litigation, United States 31 Department of Justice, Washington, 32 DC.

1 UPON DUE CONSIDERATION of this petition for review of a 2 Board of Immigration Appeals (“BIA”) decision, it is hereby 3 ORDERED, ADJUDGED, AND DECREED that the petition for review 4 is DENIED. 5 Petitioner Hongyu Wu, a native and citizen of the 6 People’s Republic of China, seeks review of an October 24, 7 2018 decision of the BIA affirming an October 11, 2017 8 decision of an Immigration Judge (“IJ”) denying Wu’s 9 application for asylum and withholding of removal.

1 In re 10 Hongyu Wu, No. A 206 291 219 (B.I.A. Oct. 24, 2018), aff’g No. 11 A206 291 219 (Immig. Ct. N.Y. City Oct. 11, 2017). We assume 12 the parties’ familiarity with the underlying facts and 13 procedural history. 14 We have reviewed the IJ’s decision as modified by the 15 BIA and address only the BIA’s conclusion that Wu failed to 16 establish a nexus between the harm he suffered and a protected 17 ground, as required for asylum and withholding of removal.

18 See Xue Hong Yang v. U.S. Dep’t of Justice, 426 F.3d 520, 522 19 (2d Cir. 2005). The applicable standards of review are well 1 Wu does not challenge the agency’s denial of his request for relief from removal under the Convention Against Torture. 2 1 established. See 8 U.S.C. §

1252(b)(4)(B); *Paloka v. Holder*, 2 762 F.3d 191, 195 (2d Cir. 2014) (reviewing factual findings 3 for substantial evidence and questions of law de novo); *Gjolaj 4 v. Bureau of Citizenship & Immigration Servs.*, 468 F.3d 140, 5 143 (2d Cir.

2006) (reviewing nexus determination for 6 substantial evidence). 7 An applicant for asylum and withholding of removal must 8 establish “a sufficiently strong nexus” between the harm he 9 suffered or feared harm and a protected ground, here, Wu’s 10 alleged political opinion. *Castro v. Holder*, 597 F.3d 93, 11 100 (2d Cir. 2010); see also 8 U.S.C. §§ 1158(b)(1)(B)(i), 12 1231(b)(3) (A).

Accordingly, Wu had to prove that his actual 13 or imputed political opinion was “at least one central reason” 14 that the police arrested, detained, and beat him. 8 U.S.C. 15 § 1158(b)(1)(B)(i); see also *Matter of C-T-L-*, 25 I. & N. 16 Dec. 341, 348 (BIA 2010) (extending “one central reason” 17 standard to withholding claims). 18 The agency reasonably concluded that Wu failed to make 19 this showing.

Opposition to corruption may constitute a 20 political opinion where it “transcends mere self-protection 21 and represents a challenge to the legitimacy or authority of 3 1 the ruling regime.” *Yueqing Zhang v. Gonzales*, 426 F.3d 540, 2 547–48 (2d Cir. 2005). Wu alleged that the police targeted 3 him because he was planning to appeal a lawsuit that he filed 4 to obtain compensation for damage to his property.

Because 5 compensation was his motivation, he did not establish that 6 his actions “transcend[ed] mere self-protection” or were 7 “directed toward a governing institution” as required to 8 demonstrate a political opinion. *Id.* (internal quotation 9 marks omitted).

The record reflects that Wu was targeted to 10 cover up “isolated, aberrational acts of greed or 11 malfeasance” not because he was viewed as challenging 12 government institutions. *Id.* at 548. His failure to show 13 that the police targeted him because of a political opinion 14 is dispositive of his petition for asylum and withholding of 15 removal. 8 U.S.C. §§ 1158(b)(1)(B)(i), 1231(b)(3) (A).

16 For the foregoing reasons, the petition for review is 17 DENIED. All pending motions and applications are DENIED and 18 stays VACATED. 19 FOR THE COURT: 20 Catherine O’Hagan Wolfe, 21 Clerk of Court 4