

UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

James v. Garland

No. 20-1666, United States Court of Appeals for the First Circuit (October 25, 2021)

SUMMARY

The First Circuit held that the BIA erred by failing to address a pro se noncitizen's request for equitable tolling of the 30-day deadline under 8 C.F.R. § 1003.38(b), where she missed the deadline due to COVID-19 pandemic conditions and serious health complications while detained. The court vacated and remanded for the BIA to consider equitable tolling in the first instance, noting the deadline is a non-jurisdictional claim-processing rule subject to equitable tolling and that the BIA must liberally construe pro se filings. The decision distinguishes equitable tolling from the BIA's discretionary self-certification authority, and confirms that federal courts have jurisdiction to review the BIA's procedural ruling on timeliness even if the underlying removal order merits remain unexhausted.

CASE DETAILS

COURT	United States Court of Appeals for the First Circuit
WRITING FOR THE COURT	Kayatta, Circuit Judge; Barron, Circuit Judge; Saris, District Judge
JURISDICTION	Federal
DECIDED	October 25, 2021
DOCKET	20-1666
DISPOSITION	vacated
PROCEDURAL POSTURE	Petition for review of an order of the Board of Immigration Appeals.
STANDARD OF REVIEW	abuse of discretion
PRECEDENTIAL VALUE	Published
PARTIES	Andrea Joy James v. Merrick B. Garland, Attorney General

TOPICS

- immigration
- appellate procedure
- administrative law
- standard of review

PRACTICE AREAS

- Immigration
- Appellate Procedure

QUESTIONS PRESENTED

1. Whether the BIA erred in failing to consider James's request for equitable tolling of the 30-day appeal deadline.
2. Whether this court has jurisdiction to review the BIA's decision when the appeal was dismissed as untimely.

HOLDINGS

1. The court has jurisdiction to consider James's arguments that the BIA erred by failing to consider her request for equitable tolling in deciding whether the appeal was timely.
2. The BIA erred by failing to address James's request for equitable tolling; the BIA's dismissal of the appeal as untimely is vacated and the matter is remanded for the BIA to consider equitable tolling in the first instance.

KEY QUOTATIONS

“we have jurisdiction to consider her arguments that the BIA erred by failing to consider her request for equitable tolling in deciding whether the appeal to the BIA was timely.” (at 9)

“we vacate the BIA's order of dismissal and remand to the BIA for it to determine in the first instance whether James's case presents circumstances warranting equitable tolling of section 1003.38(b)'s filing deadline.” (at 15-16)

FACTUAL BACKGROUND

Andrea Joy James, a native and citizen of Jamaica, entered the United States in 1989 and has lived here since. She has a U.S.-citizen daughter. In December 1999, James was sentenced to over 27 years in prison for drug offenses. After completing her sentence, she was detained by ICE in Bristol County House of Correction and placed in removal proceedings. The IJ charged her with being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) and for controlled substance convictions under § 1182(a)(2)(A)(i)(II) and (a)(2)(C). The IJ sustained those charges and denied her applications for asylum, withholding of removal, and CAT protection, ordering her removed on February 19, 2020. The written memorandum incorrectly listed the appeal deadline as March 18, 2020, instead of March 20, 2020. During this time, the COVID-19 pandemic was declared a public health emergency, and Massachusetts declared a state of emergency on March 10, 2020. James missed the March 20 deadline and filed a notice of appeal on April 1, 2020, along with a motion to accept the untimely appeal and a request for equitable tolling, citing her detention, inability to secure counsel, and serious health complications from diabetes and high blood pressure. The BIA summarily dismissed the appeal as untimely, construing the motion as a request for certification, and did not address equitable tolling.

PROCEDURAL HISTORY

The BIA dismissed James's appeal as untimely, failing to address her request for equitable tolling. James had missed the 30-day deadline to appeal the IJ's removal order. The BIA construed her motion to accept the untimely appeal as a request for certification and declined to self-certify, without considering equitable tolling.

DISPOSITION

vacated

REMAND INSTRUCTIONS

Remand to the Board of Immigration Appeals for it to determine in the first instance whether James's case presents circumstances warranting equitable tolling of section 1003.38(b)'s filing deadline.

CASES CITED

- Savino v. Souza (Savino I), 453 F. Supp. 3d 441 (D. Mass. 2020)
- Savino v. Souza (Savino II), 459 F. Supp. 3d 317 (D. Mass. 2020)
- Matter of Liadov, 23 I. & N. Dec. 990 (B.I.A. 2006)
- Poole v. Mukasey, 522 F.3d 259 (2d Cir. 2008)
- Liadov v. Mukasey, 518 F.3d 1003 (8th Cir. 2008)
- Sswajje v. Ashcroft, 350 F.3d 528 (6th Cir. 2003)
- Attipoe v. Barr, 945 F.3d 76 (2d Cir. 2019)
- Dutil v. Murphy, 550 F.3d 154 (1st Cir. 2008)
- Higgs v. Att'y Gen., 655 F.3d 333 (3d Cir. 2011)
- Pagayon v. Holder, 675 F.3d 1182 (9th Cir. 2011)
- United States v. Wong, 575 U.S. 402 (2015)
- Irigoyen-Briones v. Holder, 644 F.3d 943 (9th Cir. 2011)
- Huerta v. Gonzales, 443 F.3d 753 (10th Cir. 2006)
- Gyamfi v. Whitaker, 913 F.3d 168 (1st Cir. 2019)
- Meng Hua Wan v. Holder, 776 F.3d 52 (1st Cir. 2015)
- Daoud v. Barr, 948 F.3d 76 (1st Cir. 2020)
- Bolieiro v. Holder, 731 F.3d 32 (1st Cir. 2013)
- Holland v. Florida, 560 U.S. 631 (2010)
- Pace v. DiGuglielmo, 544 U.S. 408 (2005)
- Luis v. INS, 196 F.3d 36 (1st Cir. 1998)
- Thompson v. Barr, 959 F.3d 476 (1st Cir. 2020)
- Abdulla v. Att'y Gen., 971 F.3d 409 (3d Cir. 2020)
- Vázquez-Rivera v. Figueroa, 759 F.3d 44 (1st Cir. 2014)
- Tay-Chan v. Barr, 918 F.3d 213 (1st Cir. 2019)
- SEC v. Chenery Corp., 318 U.S. 80 (1943)
- Centro Legal de la Raza v. Exec. Off. for Immigr. Rev., No. 21-cv-00463-SI, 2021 WL 916804 (N.D. Cal. Mar. 10, 2021)

CITED IN

- James v. Garland, James v. Garland, 16 F.4th 320, 325 (1st Cir. 2021)

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