

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

Maria Garcia-Mata v. Jefferson B. Sessions, III

Maria Garcia-Mata v. Jefferson B. Sessions, III, 893 F.3d 1107 · No. No. 17-1682 · Decided June 29, 2018

SUMMARY

The Eighth Circuit granted a petition for review of a BIA decision that vacated an immigration judge's grant of withholding of removal. The court held that the BIA's opinion was too opaque to determine whether it applied the correct standard of review—clear error for factual findings under 8 C.F.R. § 1003.1(d)(3)(i)—or engaged in impermissible factfinding. The case was remanded for the BIA to clarify its reasoning or apply the proper standard. Key topics: BIA standard of review, clear error, factual findings, withholding of removal, remand for clarification.

CASE DETAILS

COURT	United States Court of Appeals for the Eighth Circuit
WRITING FOR THE COURT	COLLTON; WOLLMAN; BENTON
JURISDICTION	Federal
DECIDED	June 29, 2018
DOCKET	No. 17-1682
DISPOSITION	remanded
PROCEDURAL POSTURE	Petition for Review of an Order of the Board of Immigration Appeals
STANDARD OF REVIEW	De novo review of whether the Board applied the correct standard of review to the immigration judge's factual findings.
PRECEDENTIAL VALUE	Published
PARTIES	Maria Garcia-Mata v. Jefferson B. Sessions, III, Attorney General of the United States

TOPICS

immigration

removal proceedings

administrative law

standard of review

judicial review of agency action

PRACTICE AREAS

Immigration Law

QUESTIONS PRESENTED

1. Whether the Board of Immigration Appeals applied the correct standard of review to the immigration judge's factual findings when it vacated the withholding of removal order.

HOLDINGS

1. The Board's opinion is insufficiently clear to determine whether it applied the correct standard of review, so remand is required.

KEY QUOTATIONS

“the Immigration Judge’s findings as to whether [Garcia-Mata] met her burden in establishing the likelihood of future persecution for purposes of withholding of removal is not supported by the evidence in the record or the precedent of the United States Court of Appeals for the Eighth Circuit.” (at 3)

“based on his own speculation rather than evidence contained in the record.” (at 3)

“we cannot discern from the Board’s decision whether it followed the governing regulations on standards of review.” (at 4)

“The Board never directly asserted that the immigration judge committed clear error.” (at 4)

FACTUAL BACKGROUND

Maria Garcia-Mata, a citizen of Mexico, entered the U.S. as a child and was deported in 2015 after criminal convictions. She attempted re-entry with a stolen passport, was caught, served prison time, and was deported again. Her husband hired smugglers to bring her back. She was taken to a house in Nogales, Mexico, where she waited for nearly two weeks, saw armed men, and was instructed by someone in a Border Patrol uniform. She was apprehended entering the U.S. and detained as a material witness. The smuggling group contacted her husband with threatening messages and had her phone and identification. The immigration judge found her credible and granted withholding of removal based on membership in the social group of witnesses in criminal proceedings.

PROCEDURAL HISTORY

The immigration judge granted withholding of removal; the Board of Immigration Appeals vacated that decision, denied relief, and ordered removal.

DISPOSITION

remanded

REMAND INSTRUCTIONS

The case is remanded to the Board for further proceedings in which it may clarify its decision or apply the correct standard of review as appropriate.

CASES CITED

- Waldron v. Holder, 688 F.3d 354 (8th Cir. 2012)
- Ramirez-Peyro v. Gonzales, 477 F.3d 637 (8th Cir. 2007)
- Morton v. Ruiz, 415 U.S. 199 (1974)
- Suci v. INS, 755 F.2d 127 (8th Cir. 1985)
- Singh v. U.S. Dep't of Justice, 461 F.3d 290 (2d Cir. 2006)
- Singh v. Gonzales, 495 F.3d 553 (8th Cir. 2007)
- SEC v. Chenery Corp., 332 U.S. 194 (1947)
- Nabulwala v. Gonzales, 481 F.3d 1115 (8th Cir. 2007)
- In re R-S-H, 23 I. & N. Dec. 629 (BIA 2003)
- INS v. Ventura, 537 U.S. 12 (2002)
- Osakwe v. Mukasey, 534 F.3d 977 (8th Cir. 2008)

OPINION

COLLTON, J.

United States Court of Appeals For the Eighth Circuit _____ No. 17-1682 _____ Maria Garcia-Mata, llllllllllllllllllllllPetitioner, v. Jefferson B. Sessions, III, Attorney General of the United States, llllllllllllllllllllllRespondent. _____ Petition for Review of an Order of the Board of Immigration Appeals _____ Submitted: January 9, 2018 Filed: June 29, 2018 _____ Before WOLLMAN, COLLTON, and BENTON, Circuit Judges. _____ COLLTON, Circuit Judge.

Maria Garcia-Mata, a citizen of Mexico, petitions for review of a decision of the Board of Immigration Appeals. After an immigration judge ordered withholding of removal, the Board vacated that decision, denied relief, and ordered Garcia-Mata removed to Mexico. Garcia-Mata argues that the Board conducted de novo review and made its own findings of fact, contrary to governing regulations.

We cannot tell from the Board's rather opaque opinion whether the agency followed its regulations and applied the correct standard of review, so we remand for the Board to clarify its decision. Garcia-Mata entered the United States in the 1990s when she was eight years old and was deported in 2015 after sustaining criminal convictions. She attempted to re-enter the country using a stolen passport, but was caught by border patrol agents.

She served a five-month prison sentence and then was deported to Mexico for a second time. In an effort to aid her return to the United States yet again, Garcia- Mata's husband, with help from her father, hired a group to smuggle her across the border. According to Garcia-Mata, a member of this group instructed her to take a bus to the border city of Nogales, Mexico.

Once she arrived, a waiting taxi took her to a house in Nogales. Garcia-Mata waited at the house for almost two weeks. While she was waiting, members of the group told her that they were "not

allowed to make any mistakes,” and that “they will never leave a loose string.” She frequently saw armed men come in and out of the house. At one point, a man allegedly wearing a United States Border Patrol uniform told Garcia-Mata what questions to expect at the border and how to answer them.

Border Patrol agents apprehended Garcia-Mata when she and a member of the smuggling group entered the United States. Garcia-Mata was detained as a material witness against the smuggler, but she was never called to testify against him.

After Garcia-Mata was detained by authorities, someone in the smuggling group contacted her husband to let him know that she was detained and the reason why. The husband also received a series of text messages purportedly from someone in the group. One stated that “your wife... pointed the finger at him. You don’t do -2- that shit, man.” Another stated that when Garcia-Mata “got out,” “they had something to ask [her].” In Mexico, the smuggling group had taken Garcia-Mata’s cell phone and her Mexican identification with addresses for her grandparents in Mexico and family in Kansas City.

The group began to contact people listed as contacts in the telephone to find out more about Garcia-Mata, so her sister-in-law cancelled Garcia-Mata’s phone service shortly after Garcia-Mata was detained. Neither Garcia-Mata nor her family received any communications from the smuggling group after the series of text messages sent to the husband.

The immigration judge found that Garcia-Mata was a member of the particular social group “witnesses in criminal proceedings who will be targeted in Mexico.” The judge found Garcia-Mata credible and concluded that “the organized smuggling criminal organization would have the capability and the knowledge of [Garcia- Mata’s] address to carry out any threats.” The immigration judge ultimately concluded that future persecution was more likely than not to occur if Garcia-Mata were removed to Mexico, so he granted her application for withholding of removal.

The government appealed and argued that the immigration judge erroneously concluded that Garcia-Mata met her burden of proof to establish that she was eligible for withholding of removal. The Board agreed, concluding “that the Immigration Judge’s findings as to whether [Garcia-Mata] met her burden in establishing the likelihood of future persecution for purposes of withholding of removal is not supported by the evidence in the record or the precedent of the United States Court of Appeals for the Eighth Circuit.” The Board reasoned that the threats were “non- specific” and came “from an unidentified source.” The Board criticized the immigration judge’s conclusion that the smuggling group had the “capability and knowledge” to carry out threats against Garcia-Mata as “based on his own speculation rather than evidence contained in the record.” One Board member dissented on the -3- ground that the Board is limited to “clear error” review of predictive fact-finding, and that the government had not demonstrated clear error in the immigration judge’s finding that future persecution was more likely than not.

Garcia-Mata petitions for review, arguing the Board applied the incorrect standard of review to the immigration judge's factual findings. We review this question de novo, considering both the standard recited by the Board and the Board's analysis. *Waldron v. Holder*, 688 F.3d 354, 360-61 (8th Cir. 2012); *Ramirez-Peyro v. Gonzales*, 477 F.3d 637, 641 (8th Cir.

2007). This appeal requires attention to two settled principles of administrative law. One is that an agency, in adjudicating the rights of individuals, must follow its own procedures and regulations. *Morton v. Ruiz*, 415 U.S. 199, 235 (1974); *Suciu v. INS*, 755 F.2d 127, 129 (8th Cir. 1985) (per curiam); *Singh v. U.S. Dep't of Justice*, 461 F.3d 290, 296 (2d Cir.

2006). The second provides that in rendering an agency decision that is subject to judicial review, the Board "must describe its reasoning 'with such clarity as to be understandable.'" *Singh v. Gonzales*, 495 F.3d 553, 557 (8th Cir. 2007) (quoting *SEC v. Chenery Corp.*, 332 U.S. 194, 196 (1947)).

The relevant regulation here says that the Board has authority to review an immigration judge's factual findings for clear error, 8 C.F.R. § 1003.1(d)(3)(i), and to consider all other issues de novo. *Id.* § 1003.1(d)(3)(ii).

The Board lacks authority to engage in factfinding of its own, *Nabulwala v. Gonzales*, 481 F.3d 1115, 1118 (8th Cir. 2007), and the Board itself has said that "[a] factfinding may not be overturned simply because the Board would have weighed the evidence differently or decided the facts differently had it been the factfinder." *In re R-S-H*, 23 I. & N. Dec. 629, 637 (BIA 2003) (quoting *Board of Immigration Appeals: Procedural Reforms To Improve Case Management*, 67 Fed.

Reg. 54,878, 54,889 (Aug. 26, 2002)). -4- In this case, the Board rejected findings of fact made by the immigration judge, but we cannot discern from the Board's decision whether it followed the governing regulations on standards of review.

In discussing the evidence, the Board never directly asserted that the immigration judge committed clear error. After stating its overall conclusion that the immigration judge's "findings" were not "supported" by the evidence or by precedent of this court, the Board did cite the regulation that sets forth the standards of review for both findings of fact and questions of law.

See 8 C.F.R. § 1003.1(d)(3). But even the meaning of this citation is murky, for there are different standards of review for questions of law and findings of fact. The reference to both evidence and circuit precedent (i.e., law) in a sentence about factual findings raises the question whether the Board confused or mixed the standards of review. Without more explanation, we are unable to resolve whether the Board conducted impermissible factfinding of its own.

For these reasons, the petition for review is granted. The case is remanded to the Board for further proceedings in which it may clarify its decision or apply the correct standard of review as appropriate. See *INS v. Ventura*, 537 U.S. 12, 16 (2002) (per curiam); *Osakwe v. Mukasey*, 534 F.3d 977, 979 (8th Cir. 2008); *Ramirez-Peyro v. Gonzales*, 477 F.3d 637, 641 (8th Cir.

2007). We express no view, of course, on the merits of the administrative appeal.

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