

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Gil Bugayong v. Immigration and Naturalization Service

442 F.3d 67 (2d Cir. 2006) · No. 03-4204-AG · Decided March 15, 2006

SUMMARY

The Second Circuit held that it lacked jurisdiction to review discretionary denials of a section 212(h) waiver of inadmissibility and an adjustment of status under section 245 of the Immigration and Nationality Act. The court further held that the REAL ID Act did not restore jurisdiction because the petitioner raised no colorable constitutional claim or question of law. The petition for review was dismissed.

CASE DETAILS

COURT	United States Court of Appeals for the Second Circuit
WRITING FOR THE COURT	Per Curiam; Kears; Cardamone; Cabranes
JURISDICTION	Federal
DECIDED	March 15, 2006
DOCKET	03-4204-AG
DISPOSITION	dismissed
PROCEDURAL POSTURE	Petition for review of a Board of Immigration Appeals decision affirming an immigration judge's denial of a section 212(h) waiver of inadmissibility and adjustment of status.
STANDARD OF REVIEW	Where the BIA adopts or affirms the IJ's decision and supplements it, the court reviews the IJ's decision as supplemented by the BIA. The court first determines whether it has jurisdiction to review the challenged agency action.
PRECEDENTIAL VALUE	Published precedential opinion
PARTIES	Gil Bugayong v. Immigration and Naturalization Service

TOPICS

- adjustment of status
- removal proceedings
- appellate jurisdiction
- statutory interpretation
- administrative law

PRACTICE AREAS

- Immigration law
- Administrative law
- Appellate jurisdiction

QUESTIONS PRESENTED

1. Whether the Second Circuit had jurisdiction to review the discretionary denial of a waiver of inadmissibility under INA section 212(h).
2. Whether the Second Circuit had jurisdiction to review the discretionary denial of adjustment of status under INA section 245.
3. Whether section 106 of the REAL ID Act, codified at 8 U.S.C. § 1252(a)(2)(D), restored jurisdiction because Bugayong characterized the agency's actions as factual, legal, arbitrary, or due-process errors.
4. Whether a finding of extreme hardship under INA section 212(h) compelled the Attorney General or IJ to grant the waiver.

HOLDINGS

1. 8 U.S.C. § 1252(a)(2)(B)(i) bars judicial review of the IJ's discretionary denial of a waiver of inadmissibility under INA section 212(h).
2. 8 U.S.C. § 1252(a)(2)(B)(i) bars judicial review of the IJ's discretionary denial of adjustment of status under INA section 245.
3. In the circumstances presented, 8 U.S.C. § 1252(a)(2)(D) did not restore jurisdiction because Bugayong challenged discretionary and factual determinations and raised no colorable constitutional claim or question of law.
4. A finding of extreme hardship establishes only eligibility for section 212(h) relief and does not compel the grant of a waiver; the ultimate decision remains discretionary.

KEY QUOTATIONS

“we lack jurisdiction under 8 U.S.C. § 1252(a)(2)(B)(i) to review the IJ's discretionary denial of petitioner's request for a waiver of inadmissibility under INA section 212(h), 8 U.S.C. § 1182(h), and for an adjustment of status under INA section 245, 8 U.S.C. § 1255” (¶ 22)

“Section 106 of the REAL ID Act of 2005, 8 U.S.C. § 1252(a)(2)(D), does not override the jurisdiction-denying provision of 8 U.S.C. § 1252(a)(2)(B)(i) because petitioner challenges a discretionary determination of the IJ and does not raise any colorable “constitutional claims or questions of law” within the meaning of 8 U.S.C. § 1252(a)(2)(D).” (¶ 23)

FACTUAL BACKGROUND

Bugayong, a Philippine citizen who entered the United States on an H-1B visa, was convicted in New York of first-degree sexual abuse involving two hospital patients and sentenced to probation. The INS charged him with removability for overstaying his visa and committing a crime involving moral turpitude. He sought a section 212(h) waiver and adjustment of status, relying in part on hardship to his wife and daughters, but the IJ denied relief as a matter of discretion after finding his testimony about the assaults and his remorse not credible.

PROCEDURAL HISTORY

The immigration judge denied Bugayong's applications for a waiver of inadmissibility under INA section 212(h) and adjustment of status under INA section 245, despite finding extreme hardship to qualifying relatives. The BIA affirmed, concluding that the severity of Bugayong's conviction provided no basis to overturn the IJ's discretionary decision. Bugayong petitioned the Second Circuit for review, asserting factual, legal, and due-process-related errors.

DISPOSITION

dismissed

CASES CITED

- Ming Xia Chen v. BIA, 435 F.3d 141, 144 (2d Cir. 2006)
- Xiao Ji Chen v. U.S. Department of Justice, 434 F.3d 144, 153-55 (2d Cir. 2006)
- Vasile v. Gonzales, 417 F.3d 766, 768 (7th Cir. 2005)
- Jean v. Gonzales, 435 F.3d 475, 480 (4th Cir. 2006)
- Sukwanputra v. Gonzales, 434 F.3d 627, 634 (3d Cir. 2006)
- Mehilli v. Gonzales, 433 F.3d 86, 93 (1st Cir. 2005)
- Chacon-Botero v. U.S. Attorney General, 427 F.3d 954, 957 (11th Cir. 2005)
- Ramadan v. Gonzales, 427 F.3d 1218, 1222 (9th Cir. 2005)
- Grass v. Gonzales, 418 F.3d 876, 879 (8th Cir. 2005)
- Gatterm v. Gonzales, 412 F.3d 758, 767 & n.8 (7th Cir. 2005)
- Higuít v. Gonzales, 433 F.3d 417, 420 (4th Cir. 2006)
- Saloum v. U.S. Citizenship & Immigration Services, 437 F.3d 238, 243-44 (2d Cir. 2006)
- Torres-Aguilar v. INS, 246 F.3d 1267, 1271 (9th Cir. 2001)
- De La Vega v. Gonzales, 436 F.3d 141, 144-46 (2d Cir. 2006)
- Kalkouli v. Ashcroft, 282 F.3d 202, 204 (2d Cir. 2002)
- In re Mendez-Moralez, 21 I. & N. Dec. 296, 301 (BIA 1996)
- Drax v. Reno, 338 F.3d 98, 113 (2d Cir. 2003)