

UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

Xu v. Garland

No. 19-1044, United States Court of Appeals for the First Circuit (February 18, 2022)

SUMMARY

The First Circuit dismissed a petition for review of a Final Administrative Removal Order (FARO) for lack of jurisdiction, holding that DHS validly cancelled the FARO, leaving no final order of removal to review under 8 U.S.C. § 1252(a)(1). The court found that DHS had discretion to cancel the FARO under 8 C.F.R. § 103.5(a)(5)(i) and that the cancellation was favorable to the petitioner, even though she argued it was unfavorable. The court did not reach the merits of the petitioner's procedural due process challenges or her claim that her Massachusetts convictions for keeping a house of ill fame and money laundering did not qualify as aggravated felonies under 8 U.S.C. § 1101(a)(43)(K).

CASE DETAILS

COURT	United States Court of Appeals for the First Circuit
WRITING FOR THE COURT	Barron; Lynch; Burroughs
JURISDICTION	Federal
DECIDED	February 18, 2022
DOCKET	19-1044
DISPOSITION	dismissed
PROCEDURAL POSTURE	Petition for review of a Final Administrative Removal Order
STANDARD OF REVIEW	Jurisdictional determination
PRECEDENTIAL VALUE	Published
PARTIES	Liqun Xu v. Merrick B. Garland, Attorney General; Alejandro Mayorkas, Secretary of Homeland Security; Thomas Brophy, Assistant Field Director

TOPICS

- appellate jurisdiction
- administrative law
- due process
- statutory interpretation
- constitutional law

PRACTICE AREAS

- Immigration Law
- Administrative Law

QUESTIONS PRESENTED

1. Whether the court has jurisdiction to review the FARO after DHS cancelled it.

HOLDINGS

1. The DHS validly cancelled the FARO, so no final order of removal exists, and the court lacks jurisdiction to review the petition.

KEY QUOTATIONS

“We therefore are not persuaded by Xu’s arguments for holding that the DHS did not validly cancel her FARO, such that no ‘final order of removal’ is before us.” (at 7-8)

“For the foregoing reasons, Xu’s petition is dismissed.” (at 9)

FACTUAL BACKGROUND

Xu, a Chinese national, was admitted to the U.S. on a nonimmigrant visitor visa in 2014. In 2018, she was convicted of keeping a house of ill fame and money laundering under Massachusetts law. DHS issued a Notice of Intent to Issue a FARO, alleging she was an aggravated felon and removable. DHS then issued the FARO. Xu expressed a fear of persecution if removed to China. An asylum officer found no reasonable fear, but an immigration judge vacated that decision and found a reasonable probability of torture, granting her deferral of removal under CAT. DHS later cancelled the FARO and initiated new removal proceedings based on visa overstay.

PROCEDURAL HISTORY

Xu was admitted on a nonimmigrant visitor visa, later convicted of two Massachusetts state offenses. DHS issued a Notice of Intent and then a Final Administrative Removal Order (FARO) in March 2018. Xu expressed a fear of persecution, and after proceedings, an immigration judge granted her deferral of removal under the Convention Against Torture. DHS subsequently cancelled the FARO and initiated separate removal proceedings based on visa overstay. Xu filed a petition for review of the FARO in this court.

DISPOSITION

dismissed

CASES CITED

- *Sanabria Morales v. Barr*, 967 F.3d 15, 19 (1st Cir. 2020)
- *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999)
- *Castendet-Lewis v. Sessions*, 855 F.3d 253, 259 (4th Cir. 2017)