

UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

Sergio Elias Lopez Morales v. U.S. Attorney General

No. 20-14054, United States Court of Appeals for the Eleventh Circuit (May 11, 2022)

SUMMARY

The Eleventh Circuit denied in part and dismissed in part a Guatemalan indigenous Mayan's petition for review of the BIA's denial of asylum. The court held that the BIA provided reasoned consideration to the petitioner's racial persecution claim, even though it rejected his proposed particular social group as impermissibly circular. The court dismissed the petitioner's claim that the IJ was required under 8 U.S.C. § 1158(b)(1)(B)(ii) to provide advance notice of needed corroborating evidence and an automatic continuance, because the petitioner failed to exhaust that issue before the BIA, depriving the court of subject-matter jurisdiction.

CASE DETAILS

COURT	United States Court of Appeals for the Eleventh Circuit
WRITING FOR THE COURT	Wilson; Rosenbaum; Covington
JURISDICTION	Federal
DECIDED	May 11, 2022
DOCKET	20-14054
DISPOSITION	other
PROCEDURAL POSTURE	Petition for Review of a Decision of the Board of Immigration Appeals
STANDARD OF REVIEW	We review de novo our own jurisdiction. We review the BIA's conclusions of law de novo and its factual findings under the substantial evidence test. Claims that the BIA failed to give reasoned consideration are questions of law.
PRECEDENTIAL VALUE	Published
PARTIES	Sergio Elias Lopez Morales v. U.S. Attorney General

TOPICS

- asylum
- removal proceedings
- exhaustion of remedies
- appellate procedure
- standard of review

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the BIA failed to provide reasoned consideration to Morales's asylum claim based on racial persecution, distinct from his claim based on his proposed social group.
2. Whether the IJ should have provided advance notice of the need for specific corroborating evidence and an automatic continuance under 8 U.S.C. § 1158(b)(1)(B)(ii).

HOLDINGS

1. The BIA provided reasoned consideration because it acknowledged and adjudicated the claim, and did not misstate the record, fail to explain, or provide unreasonable justification.
2. The court lacks jurisdiction because Morales failed to exhaust his administrative remedies before the BIA.

KEY QUOTATIONS

“we ask whether the BIA ‘consider[ed] the issues raised and announce[ed] [sic] its decision in terms sufficient to enable a reviewing court to perceive that it has heard and thought and not merely reacted.’” (at 14)

“we lack jurisdiction to consider claims that have not been raised before the BIA.” (at 13)

“We lack jurisdiction to consider a claim raised in a petition for review unless the petitioner has exhausted his administrative remedies with respect to those claims.” (at 7)

FACTUAL BACKGROUND

Morales is a Guatemalan citizen of indigenous Mayan heritage. He faced discrimination and abuse from his employer Andres, who confined him and threatened to make him disappear. Morales reported the abuse to community leaders and police but received no help. He fled to the United States at age 17 and applied for asylum based on race and membership in a particular social group. The IJ found him credible but lacking corroborating evidence, and denied relief. The BIA affirmed.

PROCEDURAL HISTORY

Morales applied for asylum, withholding of removal, and CAT protection. The Immigration Judge denied his claims. The Board of Immigration Appeals dismissed his appeal. Morales then filed this petition for review.

DISPOSITION

other

CASES CITED

- *Jeune v. U.S. Att’y Gen.*, 810 F.3d 792 (11th Cir. 2016)

- Lopez v. U.S. Att'y Gen., 914 F.3d 1292 (11th Cir. 2019)
- Chacon-Botero v. U.S. Att'y Gen., 427 F.3d 954 (11th Cir. 2005)
- Amaya-Artunduaga v. U.S. Att'y Gen., 463 F.3d 1247 (11th Cir. 2006)
- Shkambi v. U.S. Att'y Gen., 584 F.3d 1041 (11th Cir. 2009)
- Gonzalez v. U.S. Att'y Gen., 820 F.3d 399 (11th Cir. 2016)
- Indrawati v. U.S. Att'y Gen., 779 F.3d 1284 (11th Cir. 2015)
- Forgue v. U.S. Att'y Gen., 401 F.3d 1282 (11th Cir. 2005)
- Yang v. U.S. Att'y Gen., 418 F.3d 1198 (11th Cir. 2005)
- Matter of J-Y-C-, 24 I. & N. Dec. 260 (BIA 2007)
- Matter of L-A-C-, 26 I. & N. Dec. 516 (BIA 2015)
- Booth v. Churner, 532 U.S. 731 (2001)
- Sun v. Ashcroft, 370 F.3d 932 (9th Cir. 2004)
- Sundar v. INS, 328 F.3d 1320 (11th Cir. 2003)
- Ren v. Holder, 648 F.3d 1079 (9th Cir. 2011)
- Saravia v. U.S. Att'y Gen., 905 F.3d 729 (3d Cir. 2018)
- Rapheal v. Mukasey, 533 F.3d 521 (7th Cir. 2008)
- Wei Sun v. Sessions, 883 F.3d 23 (2d Cir. 2018)
- Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837 (1984)
- Tan v. U.S. Atty. Gen., 446 F.3d 1369 (11th Cir. 2006)
- Bing Quan Lin v. U.S. Att'y Gen., 881 F.3d 860 (11th Cir. 2018)