

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Sonia Maritza Deras-Leon; Joan Anthony Tabora-Deras; Cruz
Humberto Valle-Deras; Jorge Antonio Tabora-Deras v. William P.
Barr, U.S. Attorney General

No. 20-60101, United States Court of Appeals for the Fifth Circuit (December 8, 2020)

SUMMARY

The Fifth Circuit denied a petition for review of the BIA's denial of a motion to reopen removal proceedings, holding that the petitioner failed to strictly comply with the procedural requirements of **Matter of Lozada** for an ineffective-assistance-of-counsel claim and failed to show prejudice because the omitted evidence was cumulative and the proposed particular social group of "informants" was not cognizable. The court also found no equitable tolling of the 90-day filing deadline due to lack of diligence and no extraordinary circumstances, and dismissed for lack of jurisdiction the challenge to the IJ's discretionary refusal to reopen **sua sponte**. Key topics include ineffective assistance of counsel, **Lozada** compliance, prejudice, cumulative evidence, particular social group, equitable tolling, and **sua sponte** reopening.

CASE DETAILS

COURT	United States Court of Appeals for the Fifth Circuit
WRITING FOR THE COURT	Jones; Barksdale; Stewart
JURISDICTION	Federal
DECIDED	December 8, 2020
DOCKET	20-60101
DISPOSITION	DISMISSED IN PART; DENIED IN PART
PROCEDURAL POSTURE	Petition for Review of an Order of the Board of Immigration Appeals
STANDARD OF REVIEW	The denial of a motion to reopen is reviewed under a highly deferential abuse of discretion standard.
PRECEDENTIAL VALUE	Unpublished
PARTIES	Sonia Maritza Deras-Leon; Joan Anthony Tabora-Deras; Cruz Humberto Valle-Deras; Jorge Antonio Tabora-Deras v. William P. Barr, U.S. Attorney General

TOPICS

administrative law

judicial review of agency action

appellate jurisdiction

standard of review

due process

PRACTICE AREAS

Immigration

Administrative Law

QUESTIONS PRESENTED

1. Whether the IJ erred in denying the motion to reopen based on ineffective assistance of counsel due to failure to comply with Lozada and lack of prejudice.
2. Whether equitable tolling of the 90-day deadline for moving to reopen is warranted.
3. Whether the court has jurisdiction to review the IJ's decision not to reopen sua sponte.

HOLDINGS

1. Deras failed to comply with Lozada's procedural requirements because she did not provide counsel's response to her allegations and inaccurately stated counsel had not responded.
2. Deras failed to show prejudice because the unoffered evidence (testimony and police reports) would have been cumulative and the proposed PSG of 'informants' is not cognizable.
3. Equitable tolling is not warranted because Deras did not show diligent pursuit of her rights or extraordinary circumstances beyond her control.
4. The court lacks jurisdiction because the IJ has complete discretion and there is no standard by which to judge the ruling.

KEY QUOTATIONS

"Motions to reopen are disfavored, and the denial of a motion to reopen is reviewed under a 'highly deferential abuse of discretion standard'." (at 3)

"this court has held strict compliance with Lozada is mandatory." (at 3)

"Deras failed to make the necessary showing of prejudice because she did not show a reasonable likelihood that the proceeding might have been different but for counsel's decisions not to call her son to testify about the murder of his father, not to introduce police reports about the murder, and not to assert that Deras belonged to the PSG of 'informants'." (at 4)

"we lack jurisdiction to review the IJ's decision not to reopen a case sua sponte because the IJ has complete discretion whether to do so, and we therefore have no standard by which to judge the ruling." (at 5)

FACTUAL BACKGROUND

Sonia Maritza Deras-Leon and her three minor children, natives and citizens of Honduras, entered the United States without authorization in February 2015. Deras's husband was murdered by her nephew, a gang leader, and she feared for her life. The IJ denied her claims for asylum, withholding of removal, and relief under the Convention Against Torture.

PROCEDURAL HISTORY

The petitioners were ordered removed by an immigration judge in November 2015. They moved to reopen based on ineffective assistance of counsel. The IJ denied the motion, and the BIA affirmed without opinion. The petitioners seek review.

DISPOSITION

DISMISSED IN PART; DENIED IN PART

CASES CITED

- Matter of Lozada, 19 I. & N. Dec. 637, 638 (BIA 1988)
- Lara v. Trominski, 216 F.3d 487, 496 (5th Cir. 2000)
- Lugo-Resendez v. Lynch, 831 F.3d 337, 340 (5th Cir. 2016)
- Mai v. Gonzales, 473 F.3d 162, 165 (5th Cir. 2006)
- Assaad v. Ashcroft, 378 F.3d 471, 475 (5th Cir. 2004)
- Hernandez-Ortez v. Holder, 741 F.3d 644, 647–48 (5th Cir. 2014)
- Diaz v. Sessions, 894 F.3d 222, 228 (5th Cir. 2018)
- Skinner v. Quarterman, 528 F.3d 336, 345 n.11 (5th Cir. 2008)
- Hernandez-De La Cruz v. Lynch, 819 F.3d 784, 786–87 (5th Cir. 2016)
- United States v. Petty, 530 F.3d 361, 366 (5th Cir. 2008)
- Mejia v. Whitaker, 913 F.3d 482, 490 (5th Cir. 2019)

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