

# UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

## Ansari v. Garland

No. 20-60107, United States Court of Appeals for the Fifth Circuit (April 13, 2021)

### SUMMARY

The Fifth Circuit denied in part and dismissed in part a petition for review of the BIA's denial of a motion to reopen removal proceedings. The court held that the BIA did not abuse its discretion in determining the petitioner failed to make a prima facie showing for Convention Against Torture relief based on changed circumstances in India. The court also lacked jurisdiction to review the BIA's refusal to sua sponte reopen because no legal barrier was shown, and the petitioner abandoned any challenge to the failure to submit a required application for cancellation of removal.

### CASE DETAILS

|                       |                                                                                                                   |
|-----------------------|-------------------------------------------------------------------------------------------------------------------|
| COURT                 | United States Court of Appeals for the Fifth Circuit                                                              |
| WRITING FOR THE COURT | Per Curiam; Wiener; Southwick; Duncan                                                                             |
| JURISDICTION          | Federal                                                                                                           |
| DECIDED               | April 13, 2021                                                                                                    |
| DOCKET                | 20-60107                                                                                                          |
| DISPOSITION           | other                                                                                                             |
| PROCEDURAL POSTURE    | Petition for review of an order of the Board of Immigration Appeals denying motion to reopen removal proceedings. |
| STANDARD OF REVIEW    | Abuse of discretion                                                                                               |
| PRECEDENTIAL VALUE    | Unpublished                                                                                                       |
| PARTIES               | Imran Haroon Ansari v. Merrick Garland, U.S. Attorney General                                                     |

### TOPICS

immigration removal proceedings cancellation of removal asylum standard of review  
appellate jurisdiction subject matter jurisdiction waiver

### PRACTICE AREAS

Immigration

## QUESTIONS PRESENTED

1. Whether the BIA abused its discretion in denying Ansari's motion to reopen for CAT relief
2. Whether the court has jurisdiction to review the BIA's refusal to sua sponte reopen
3. Whether the immigration court erred in denying reopening for cancellation of removal based on Pereira

## HOLDINGS

1. The BIA did not abuse its discretion because Ansari failed to make a prima facie showing of entitlement to CAT relief.
2. The court lacks jurisdiction because Ansari failed to show a legal barrier prevented the BIA from exercising its sua sponte authority.
3. Ansari abandoned the issue by failing to challenge the finding that he did not submit an application with his motion.

## KEY QUOTATIONS

*“We review an immigration court’s denial of a motion to reopen removal proceedings under a highly deferential abuse-of-discretion standard.” (at 2)*

*“Because Ansari has failed to show that a legal barrier prevented the BIA from exercising its sua sponte authority to reopen the removal proceedings, we lack jurisdiction to review his alternative argument.” (at 2)*

*“Because Ansari does not challenge in his opening brief the immigration courts’ finding that he failed to submit with his motion to reopen an application for cancelation of removal, as required by § 1003.23(b)(3), he has abandoned the issue.” (at 3)*

## FACTUAL BACKGROUND

Ansari is a native and citizen of India. He sought to reopen his removal proceedings to pursue relief under the Convention Against Torture based on changed circumstances in India, and also sought cancellation of removal based on *Pereira v. Sessions*.

## PROCEDURAL HISTORY

Ansari, a native and citizen of India, petitioned for review of the BIA's order denying his motion to reopen his removal proceedings, declining to sua sponte reopen, and dismissing his appeal from the immigration judge's order denying a motion to reopen.

## DISPOSITION

other

## CASES CITED

- *Altamirano-Lopez v. Gonzales*, 435 F.3d 547 (5th Cir. 2006)
- *Lugo-Resendez v. Lynch*, 831 F.3d 337 (5th Cir. 2016)

- *Chen v. Gonzales*, 470 F.3d 1131 (5th Cir. 2006)
- *Qorane v. Barr*, 919 F.3d 904 (5th Cir. 2019)
- *Rodriguez-Saragosa v. Sessions*, 904 F.3d 349 (5th Cir. 2018)
- *Pereira v. Sessions*, *Pereira v. Sessions*, 138 S. Ct. 2105 (2018)
- *Niz-Chavez v. Barr*, 141 S. Ct. 84 (2020)
- *Soadjede v. Ashcroft*, 324 F.3d 830 (5th Cir. 2003)
- *Yanez-Pena v. Barr*, 952 F.3d 239 (5th Cir. 2020)
- *Wicker v. McCotter*, 798 F.2d 155 (5th Cir. 1986)
- *Thompson v. Dallas City Att'y's Office*, 913 F.3d 464 (5th Cir. 2019)

## OPINION

### PER CURIAM.

Case: 20-60107 Document: 00515819944 Page: 1 Date Filed: 04/13/2021 United States Court of Appeals for the Fifth Circuit United States Court of Appeals Fifth Circuit FILED April 13, 2021 No. 20-60107 Lyle W. Cayce Summary Calendar Clerk Imran Haroon Ansari, also known as Alex, Petitioner, versus Merrick Garland, U.S. Attorney General, Respondent. Petition for Review of an Order of the Board of Immigration Appeals BIA No. A078 505 565 Before Wiener, Southwick, and Duncan, Circuit Judges.

Per Curiam:\* Imran Haroon Ansari, a native and citizen of India, petitions for review of an order of the Board of Immigration Appeals (BIA) denying his motion to reopen his removal proceedings, declining to sua sponte reopen, and dismissing his appeal from the immigration judge's order denying a \* Pursuant to 5th Circuit Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5th Circuit Rule 47.5.4.

Case: 20-60107 Document: 00515819944 Page: 2 Date Filed: 04/13/2021 No. 20-60107 motion to reopen. He has also moved for a stay of removal and a stay of the proceedings. Motions to reopen removal proceedings are “disfavored, and the moving party [must] bear[] a heavy burden.” *Altamirano-Lopez v. Gonzales*, 435 F.3d 547, 549-50 (5th Cir. 2006) (internal quotation marks and citation omitted).

We review an immigration court's denial of a motion to reopen removal proceedings “under a highly deferential abuse-of-discretion standard.” *Lugo-Resendez v. Lynch*, 831 F.3d 337, 340 (5th Cir. 2016) (internal quotation marks and citation omitted).

The BIA “abuses its discretion when it issues a decision that is capricious, irrational, utterly without foundation in the evidence, based on legally erroneous interpretations of statutes or regulations, or based on unexplained departures from regulations or established policies.” *Id.* (internal quotation marks and citation omitted). Ansari argues that the BIA should have reopened

the removal proceedings under 8 C.F.R. § 1003.23(b)(4)(i), so that he could pursue relief under the Convention Against Torture (CAT) based on his evidence of changed circumstances in India.

Ansari, however, has failed to show that the BIA abused its discretion in determining that he did not make a prima facie showing that he was entitled to CAT relief. See 8 C.F.R. § 208.16(c)(2); Lugo-Resendez, 831 F.3d at 340; *Chen v. Gonzales*, 470 F.3d 1131, 1139 (5th Cir. 2006).

Because Ansari has failed to show that a legal barrier prevented the BIA from exercising its sua sponte authority to reopen the removal proceedings, we lack jurisdiction to review his alternative argument that the BIA erred when it declined to do so. See *Qorane v. Barr*, 919 F.3d 904, 911- 12 (5th Cir. 2019); *Rodriguez-Saragosa v. Sessions*, 904 F.3d 349, 355 (5th Cir.

2018). 2 Case: 20-60107 Document: 00515819944 Page: 3 Date Filed: 04/13/2021 No. 20-60107 Finally, Ansari contends that the immigration courts erred in declining to reopen the removal proceedings so that he could file an application for cancellation of removal in light of *Pereira v. Sessions*, 138 S. Ct. 2105 (2018), and that we should enter a stay of removal and stay of the proceedings pending the Supreme Court's decision in *Niz-Chavez v. Barr*, 141 S. Ct.

84, 84 (U.S. June 8, 2020). Because Ansari does not challenge in his opening brief the immigration courts' finding that he failed to submit with his motion to reopen an application for cancelation of removal, as required by § 1003.23(b)(3), he has abandoned the issue. See *Soadjede v. Ashcroft*, 324 F.3d 830, 833 (5th Cir. 2003).

Moreover, Ansari's reliance on the grant of certiorari in *Niz-Chavez* is unavailing. See *Yanez-Pena v. Barr*, 952 F.3d 239, 245-46 (5th Cir. 2020), petition for cert. filed (U.S. Apr. 8, 2020) (No. 19-1208). We are bound by our precedents unless and until those precedents are altered by a decision of the Supreme Court. *Wicker v. McCotter*, 798 F.2d 155, 157-58 (5th Cir.

1986); see *Thompson v. Dallas City Att'y's Office*, 913 F.3d 464, 467 (5th Cir. 2019). Accordingly, Ansari's petition for review is DENIED in part and DISMISSED in part. His motions for a stay of removal and to stay the proceedings are DENIED. 3