

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

Ochoa v. Holder

633 F.3d 623 (8th Cir. 2010) · No. No. 07-3715 · Decided August 27, 2010

SUMMARY

The Eighth Circuit denied Ana Rosa Ochoa’s petition for rehearing by the panel after dismissing her petition for review of the Board of Immigration Appeals’ action on her motion to reopen. Judge Colloton dissented, arguing that the panel incorrectly characterized the BIA’s action as a refusal to reopen the case sua sponte and that the government failed to defend that characterization.

CASE DETAILS

COURT	United States Court of Appeals for the Eighth Circuit
JURISDICTION	Federal
DECIDED	August 27, 2010
DOCKET	No. 07-3715
DISPOSITION	other
PROCEDURAL POSTURE	The court denied the petitioner's petition for rehearing by the panel following dismissal of her petition for review of the Board of Immigration Appeals' treatment of her motion to reopen.
STANDARD OF REVIEW	The dissent states that the government had acknowledged that the BIA's decision was reviewable for abuse of discretion; the majority's prior disposition treated the sua sponte reopening determination as committed to agency discretion by law.
PRECEDENTIAL VALUE	Published order denying panel rehearing; the accompanying dissent is not binding.
PARTIES	Ana Rosa Ochoa v. Eric H. Holder, Jr., United States Attorney General

TOPICS

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PRACTICE AREAS

Immigration law

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QUESTIONS PRESENTED

1. Whether the panel correctly characterized the BIA's action on Ochoa's motion to reopen as a refusal to reopen sua sponte rather than a denial of a timely party-filed motion to reopen.
2. Whether rehearing by the panel should be granted in light of the government's failure to defend the key premise of the panel's prior decision.

KEY QUOTATIONS

“The petition for rehearing by the panel filed by petitioner is denied.” (633 F.3d at 624)

FACTUAL BACKGROUND

Ana Rosa Ochoa filed a motion to reopen her immigration case with the Board of Immigration Appeals. The dispute concerned whether the BIA denied a timely motion to reopen filed by Ochoa or merely refused to exercise its discretionary authority to reopen the case sua sponte.

PROCEDURAL HISTORY

The panel previously dismissed Ochoa's petition for review, concluding that the Board of Immigration Appeals had only declined to exercise its sua sponte authority to reopen the case and that the decision was committed to agency discretion by law. Ochoa sought panel rehearing, arguing that the Board had instead denied a timely motion to reopen filed by a party. The panel denied rehearing; Judge Colloton dissented from that denial.

DISPOSITION

other

CASES CITED

- Ochoa v. Holder, 604 F.3d 546 (8th Cir. 2010)
- Tamenut v. Mukasey, 521 F.3d 1000 (8th Cir. 2008) (en banc)