

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Zhang v. Barr

No. 18-436, United States Court of Appeals for the Second Circuit (April 16, 2019)

SUMMARY

Zhang v. Barr (2d Cir. 2019) holds that an Immigration Judge violated due process by sua sponte converting a master calendar hearing into an individual hearing on only 21 days' notice, depriving the petitioner of a full and fair opportunity to present his adjustment of status application. The court also found an abuse of discretion in denying a brief continuance where the petitioner made good-faith efforts to comply and had not previously sought a continuance. The petition for review was granted, the BIA order vacated, and the case remanded. Key topics: immigration due process, continuance abuse of discretion, adjustment of status, expedited proceedings.

CASE DETAILS

COURT	United States Court of Appeals for the Second Circuit
WRITING FOR THE COURT	Robert A. Katzmann; José A. Cabranes; Susan L. Carney
JURISDICTION	Federal
DECIDED	April 16, 2019
DOCKET	18-436
DISPOSITION	vacated
PROCEDURAL POSTURE	Petition for review of a decision of the Board of Immigration Appeals
STANDARD OF REVIEW	Due process claims reviewed de novo; denial of continuance reviewed for abuse of discretion.
PRECEDENTIAL VALUE	Unpublished
PARTIES	De Ren Zhang v. William P. Barr, Attorney General

TOPICS

- immigration
- removal proceedings
- adjustment of status
- due process
- standard of review

PRACTICE AREAS

- Immigration Law

QUESTIONS PRESENTED

1. Whether the IJ's acceleration of the hearing schedule and conversion to an individual hearing without a master calendar hearing violated Zhang's due process rights.
2. Whether the IJ abused its discretion in denying Zhang's motion for a continuance.

HOLDINGS

1. The IJ's decision to skip the master calendar hearing and convert to an individual hearing with only 21 days' notice deprived Zhang of a full and fair opportunity to present his application for adjustment of status, thus violating due process.
2. The IJ abused its discretion in denying Zhang's request for a one-week continuance given the unusual circumstances, Zhang's good-faith attempt to comply, the short time to prepare, the lack of prior continuances, and the government's non-opposition.

KEY QUOTATIONS

"To establish a violation of due process, an alien must show 'that [he] was denied a full and fair opportunity to present [his] claims' or 'that the IJ or BIA otherwise deprived [him] of fundamental fairness.'" (at 2-3)

"Eliminating the master calendar hearing was a clear deviation from standard procedure, depriving Zhang a full and fair opportunity to present his application for adjustment." (at 4)

"Thus, the BIA erred in finding that Zhang had not demonstrated that he was prejudiced by the IJ's decision to dramatically accelerate his proceedings and skip directly to an evidentiary hearing without first holding a master calendar hearing." (at 5)

FACTUAL BACKGROUND

Zhang, a native of China, sought adjustment of status. After Congressman Pallone requested an earlier hearing date on Zhang's behalf, the IJ moved the hearing up to 21 days later and converted it to an individual hearing without a master calendar hearing. Zhang was unable to submit required evidence and requested a one-week continuance, which was denied. The IJ ordered removal.

PROCEDURAL HISTORY

The BIA affirmed the IJ's decision denying Zhang's application for adjustment of status and ordering removal. The IJ had accelerated the hearing schedule and denied a continuance.

DISPOSITION

vacated

REMAND INSTRUCTIONS

Remand for further proceedings consistent with the court's order.

CASES CITED

- Yang v. U.S. Dep't of Justice, 426 F.3d 520, 522 (2d Cir. 2005)
- Chen v. Gonzales, 417 F.3d 268, 271 (2d Cir. 2005)
- Pierre v. Holder, 588 F.3d 767, 772 (2d Cir. 2009)
- Burger v. Gonzales, 498 F.3d 131, 134 (2d Cir. 2007)
- Xiao Ji Chen v. U.S. Dep't of Justice, 434 F.3d 144, 155 (2d Cir. 2006)
- Garcia-Villeda v. Mukasey, 531 F.3d 141, 149 (2d Cir. 2008)
- Lattab v. Ashcroft, 384 F.3d 8, 20 (1st Cir. 2004)
- Dedji v. Mukasey, 525 F.3d 187, 191 (2d Cir. 2008)
- Morgan v. Gonzales, 445 F.3d 549, 551-52 (2d Cir. 2006)
- Zervos v. Verizon N.Y., Inc., 252 F.3d 163, 169 (2d Cir. 2001)
- Matter of Sibrun, 18 I. & N. Dec. 354, 356-57 (B.I.A. 1983)
- Sanusi v. Gonzales, 445 F.3d 193, 200 (2d Cir. 2006)
- Gomez-Ramos v. Sessions, 682 F. App'x 68, 70 (2d Cir. 2017)
- Molina v. Holder, 586 F. App'x 80, 81-82 (2d Cir. 2014)
- Singh v. Holder, 583 F. App'x 4, 7 (2d Cir. 2014)
- Bihua Chen v. Gonzales, 226 F. App'x 21, 22 (2d Cir. 2007)