

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Hachem v. Holder

656 F.3d 430 (6th Cir. 2011) · No. Nos. 09-3992, 09-4453 · Decided August 29, 2011

SUMMARY

The Sixth Circuit denied petitions for review brought by Mohamed Allalen and Kassem Hachem and their family members, who sought immigration relief based on alleged persecution in Algeria and Lebanon. The court upheld the denial of asylum, withholding of removal, and Convention Against Torture protection, concluding that the record supported the agency's findings regarding credibility, persecution, and changed country conditions. The court also upheld the validity and application of a regulation automatically terminating voluntary departure upon the filing of a petition for judicial review.

CASE DETAILS

COURT	United States Court of Appeals for the Sixth Circuit
WRITING FOR THE COURT	Alice M. Batchelder, Chief Judge; Jeffrey S. Sutton, Circuit Judge; Richard Allen Griffin McKeague, Circuit Judge
JURISDICTION	Federal
DECIDED	August 29, 2011
DOCKET	Nos. 09-3992, 09-4453
DISPOSITION	writ_denied
PROCEDURAL POSTURE	Consolidated petitions for review of Board of Immigration Appeals orders denying asylum, withholding of removal, and Convention Against Torture protection, together with motions to stay voluntary departure.
STANDARD OF REVIEW	The court reviewed the BIA's decision as the final agency determination and also reviewed the IJ's reasoning to the extent the BIA adopted it. Factual findings, including credibility determinations, were reviewed under the substantial-evidence standard and would be reversed only if any reasonable adjudicator would be compelled to conclude otherwise. Constitutional claims and questions of law concerning the voluntary-departure regulation were reviewed under the applicable legal standard, including Chevron's two-step framework for statutory authority.

PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Kassem Hachem, Hiam Seheim, Mohamad Hachem, Hussein Hachem, Mohamed Allalen v. Eric H. Holder, Jr., United States Attorney General

TOPICS

asylum

removal proceedings

judicial review of agency action

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether substantial evidence supported the adverse credibility determination and denial of asylum to Allalen.
2. Whether the IJ's questioning and comments denied Allalen a full and fair hearing under the Due Process Clause.
3. Whether changed country conditions negated Hachem's reasonable fear of future persecution and required denial of withholding of removal.
4. Whether 8 C.F.R. § 1240.26(i), which automatically terminates voluntary departure upon filing a petition for review, was authorized by statute and consistent with the separation of powers.
5. Whether the automatic-termination regulation applied to the petitioners' grants or reinstatements of voluntary departure.

HOLDINGS

1. The adverse credibility determination was supported by substantial evidence, and Allalen failed to establish past persecution or a well-founded fear of future persecution sufficient for asylum.
2. Allalen failed to show that the IJ's questioning, tone, or isolated sarcastic comment denied him a full and fair hearing.
3. Changed country conditions in Lebanon negated any reasonable fear of future persecution, so Hachem failed to establish eligibility for withholding of removal.
4. The regulation automatically terminating voluntary departure upon filing a petition for review is authorized by the governing statutes and is a valid exercise of delegated rulemaking authority.
5. The regulation applied to both petitioners because the BIA's post-effective-date orders granted or reinstated voluntary departure, rather than merely extending an existing departure period.

KEY QUOTATIONS

"[A]ny grant of voluntary departure shall terminate automatically upon the filing of the petition or other judicial challenge." (438)

"Congress expressly authorized the Attorney General to exercise his discretion to determine who may be permitted to voluntarily depart, and sufficiently delineated the field within which the Attorney General is to exercise that discretion." (439)

FACTUAL BACKGROUND

Mohamed Allalen, an Algerian Berber, alleged that Muslim extremists threatened and assaulted him because of his ethnicity and relationship with his girlfriend, but he supplied limited corroboration. Kassem Hachem, a Lebanese national opposed to Syrian influence in Lebanon, was detained and beaten by Syrian officers in 1999 after an anti-Syrian demonstration and feared renewed persecution. By the time of review, Syrian forces had withdrawn from Lebanon and country conditions had materially changed. Both petitioners had received grants of voluntary departure and sought stays after filing their petitions for review.

PROCEDURAL HISTORY

The immigration judges denied the requested immigration relief but granted voluntary departure. The BIA affirmed or dismissed the relevant appeals, and the petitioners sought review in the Sixth Circuit. The court denied both petitions for review and denied the motions to stay voluntary departure.

DISPOSITION

writ_denied

CASES CITED

- Patel v. Gonzales, 470 F.3d 216, 219 (6th Cir. 2006)
- Singh v. Ashcroft, 398 F.3d 396, 400 (6th Cir. 2005)
- Mostafa v. Ashcroft, 395 F.3d 622, 624 (6th Cir. 2005)
- Gilaj v. Gonzales, 408 F.3d 275, 283 (6th Cir. 2005) (per curiam)
- Sylla v. INS, 388 F.3d 924, 925 (6th Cir. 2004)
- Pergega v. Gonzales, 417 F.3d 623, 627 (6th Cir. 2005)
- El-Moussa v. Holder, 569 F.3d 250, 256 (6th Cir. 2009)
- Dorosh v. Ashcroft, 398 F.3d 379, 382 (6th Cir. 2005)
- Ndrecaj v. Mukasey, 522 F.3d 667, 673 (6th Cir. 2008)
- Garza-Moreno v. Gonzales, 489 F.3d 239, 241 (6th Cir. 2007)
- Ahmed v. Gonzales, 398 F.3d 722, 725 (6th Cir. 2005)
- Elias v. Gonzales, 490 F.3d 444, 451 (6th Cir. 2007) (per curiam)
- Ivezaj v. INS, 84 F.3d 215, 220 (6th Cir. 1996)
- Visha v. INS, 51 Fed. Appx. 547, 551 (6th Cir. 2002)
- INS v. Elias-Zacarias, 502 U.S. 478, 481 (1992)
- Mullai v. Ashcroft, 385 F.3d 635, 638 (6th Cir. 2004)
- Khalili v. Holder, 557 F.3d 429, 435-436 (6th Cir. 2009)

- *Thap v. Mukasey*, 544 F.3d 674, 681 (6th Cir. 2008)
- *Patel v. Attorney General*, 619 F.3d 230, 234 (3d Cir. 2010)
- *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842-843 (1984)
- *Mistretta v. United States*, 488 U.S. 361, 371-372 (1989)
- *Whitman v. American Trucking Associations*, 531 U.S. 457, 474 (2001)
- *United States v. Ramirez-Lopez*, 251 Fed. Appx. 390, 391 (9th Cir. 2007)
- *Lopez v. Mukasey*, 313 Fed. Appx. 96, 102 (10th Cir. 2008)
- *Ngarurih v. Ashcroft*, 371 F.3d 182, 194 (4th Cir. 2004)
- *Desta v. Ashcroft*, 365 F.3d 741, 743 (9th Cir. 2004)
- *Nwakanma v. Ashcroft*, 352 F.3d 325, 327 (6th Cir. 2003) (per curiam)
- *Hakim v. Holder*, 611 F.3d 73, 78 (1st Cir. 2010)
- *Sanchez-Velasco v. Holder*, 593 F.3d 733, 737 (8th Cir. 2010)