IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit
FILED
August 6, 2019
Lyle W. Cayce
Clerk

No. 17-60722

GABRIELLA ALEJANDRA RAMIREZ-ORTEZ,

Petitioner

v.

WILLIAM P. BARR, U. S. ATTORNEY GENERAL,

Respondent

Petition for Review of an Order of
the Board of Immigration Appeals
BIA No. A202 137 797

Before STEWART, Chief Judge, and DAVIS and ELROD, Circuit Judges.

PER CURIAM:*

Gabriella Ramirez-Ortez filed a petition asking the court to decide whether the Board of Immigration Appeals ("BIA") wrongly denied her relief from removal. Before a decision issued, Ramirez-Ortez became subject to another removal order and applied for additional relief before the agency. The live agency proceedings moot this petition. Therefore, the petition is DISMISSED.

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

I. BACKGROUND

Ramirez-Ortez, a native and citizen of Honduras, seeks relief from removal in simultaneous proceedings. In this proceeding, Ramirez-Ortez seeks review of a BIA decision affirming an immigration judge's ("IJ") order (1) denying Ramirez-Ortez's applications for withholding of removal and protection under the Convention Against Torture ("CAT") and (2) ordering her removal to Honduras. In the other proceeding, Ramirez-Ortez seeks asylum, withholding of removal, and CAT protection before the agency. In other words, Ramirez-Ortez's petition asks the court to review her claims for relief from one removal order while the agency considers almost the same claims for relief from a new removal order. This apparently sui generis scenario requires explanation.

In November 2014, Ramirez-Ortez left Honduras and tried to enter the United States border without valid entry documents. The Department of Homeland Security ("DHS") issued her an expedited removal order.[1] Ramirez-Ortez underwent a credible fear interview but was not found to have a credible fear of persecution, so DHS removed her to Honduras.[2]

Ramirez-Ortez re-entered the United States and was discovered by DHS in September 2016. DHS reinstated her 2014 removal order. 8 C.F.R. § 241.8.

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[1] An expedited removal order permits immigration officers to remove an arriving alien "without further hearing" unless the alien expresses "a fear of persecution." 8 U.S.C. § 1225(b)(1)(A).

[2] Asylum officers administer credible fear interviews when an alien, subject to expedited removal, expresses a fear of persecution. 8 U.S.C. § 1225(b)(1)(A)–(B). A "credible fear of persecution" requires, among other things, the "significant possibility . . . that the alien could establish eligibility for asylum." *Id.* § 1225(b)(1)(B)(v). If an alien is determined to have a credible fear of persecution, she can remain in the United States while her claims for relief are considered. *Id.* § 1225(b)(1)(B)(ii).

After Ramirez-Ortez passed a reasonable fear interview,[3] she was permitted to file applications for withholding of removal and CAT protection, in which she alleged that a longtime acquaintance in Honduras had been persecuting her on account of her sexual orientation. She was not permitted to apply for asylum. 8 U.S.C. § 1231(a)(5). The IJ denied her applications for relief and ordered her removed to Honduras. The BIA affirmed, and Ramirez-Ortez timely appealed to the Fifth Circuit. Then, while Ramirez-Ortez's petition was pending before the court, DHS executed the reinstated removal order and removed Ramirez-Ortez to Honduras.

Rather than remain in Honduras and wait for the court's decision, Ramirez-Ortez tried to re-enter the United States with someone else's documents.[4] She was prosecuted and served her sentence, after which DHS issued her an expedited removal order. Ramirez-Ortez passed a credible fear interview, so she was allowed to file applications for asylum, withholding of removal, and CAT protection—while her prior applications for withholding of removal and CAT protection were still pending before this court.[5] The new applications are pending before an IJ. At present, DHS cannot remove

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[3] A reasonable fear interview is, in essence, a credible fear interview for an individual with a reinstated removal order who expresses a fear of returning to her home country. 8 C.F.R. § 208.31.

[4] Ramirez-Ortez points out that her return was prompted by her fear of persecution in Honduras, which immigration officials have twice deemed credible.

[5] Ramirez-Ortez was permitted to apply for asylum in the latest proceeding because she was issued an expedited removal order, not a reinstated removal order. 8 C.F.R. § 208.30(f). The court presumes that Ramirez-Ortez was issued an expedited removal order rather than a reinstated removal order because she was discovered at the border. *Compare* 8 C.F.R. § 241.8(a) ("An alien who illegally reenters the United States" after a prior removal is subject to reinstatement.), *with* 8 C.F.R. § 235.3(b) (stating that arriving aliens are subject to expedited removal) and 8 C.F.R. § 1.2 (An arriving alien is someone "coming or attempting to come into the United States at a port-of-entry.").

Ramirez-Ortez until the IJ orders her removal in this proceeding and the BIA affirms it (or she declines to appeal). 8 C.F.R. § 1003.6(a). Given these circumstances, the government moved for the court to dismiss this petition for mootness.

II. DISCUSSION

A.

Congress grants the courts of appeals jurisdiction to review final orders of removal. 8 U.S.C. § 1252. When submitted, this petition was under the court's jurisdiction: it arose from Ramirez-Ortez's reinstated removal order, which was final under 8 U.S.C. § 1101(a)(47). *See, e.g., Garcia v. Holder,* 756 F.3d 885, 890 (5th Cir. 2014) (asserting jurisdiction over a similar petition). Since then, Ramirez-Ortez has been removed, returned, and applied for removal relief before the agency. The government argues that this sequence of events moots the petition before the court.

A petition is moot when it is "impossible for [this] court to grant any effectual relief whatever to the prevailing party." *Knox v. Serv. Emps. Int'l Union, Local 1000,* 567 U.S. 298, 307 (2012) (citations and internal quotation marks omitted). The government concedes that Ramirez-Ortez's removal alone does not moot her petition. *See Nken v. Holder*, 556 U.S. 418, 435 (2009) ("Aliens who are removed may continue to pursue their petitions for review, and those who prevail can be afforded effective relief by facilitation of their return, along with restoration of the immigration status they had upon removal."). But the government argues that since Ramirez-Ortez returned to the United States of her own accord, the court cannot grant her relief because "DHS [has] no need to facilitate her return."

This argument misunderstands the nature of the relief sought by Ramirez-Ortez. By applying for withholding of removal and CAT protection, Ramirez-Ortez sought respite from future removal to Honduras—not

transportation back to the United States. 8 U.S.C. § 1231(b)(3)(A); 8 C.F.R. § 208.22. If either form of relief is granted, she "may not be deported or removed" to Honduras. *Id.* § 208.22. Her return to the United States makes it easier for the court—and government—to effectuate relief. The Ninth Circuit, sitting en banc, has held as much. *Maldonado v. Lynch*, 786 F.3d 1155, 1160–61 (9th Cir. 2015) (en banc). In *Maldonado*, the court held that an alien maintained his "personal stake in the outcome of the lawsuit" when he was removed and then unlawfully returned to the United States prior to the court's decision on his petition. *Id.* at 1161 (citation omitted).

The fact of Ramirez-Ortez's new removal order and ongoing agency proceedings, however, complicate this analysis. Ramirez-Ortez's plight is now controlled by her new removal order. This removal order is not at issue before the court, 8 U.S.C. § 1252(a), and the agency is currently considering whether to grant Ramirez-Ortez relief from the removal order. If the agency grants Ramirez-Ortez relief, the court's decision on this petition is irrelevant. If the agency denies Ramirez-Ortez relief, she can petition the court for review after the agency issues a final order of removal. It seems, then, that the court cannot effectuate relief on the basis of this petition—not because Ramirez-Ortez is in the United States, but because she now seeks relief from a removal order over which this court has no jurisdiction. In other words, she no longer has a "personal stake in the outcome" of this petition. *Lewis v. Cont'l Bank Corp.*, 494 U.S. 472, 478 (1990) (citation omitted).

B.

Ramirez-Ortez argues in the alternative that the court should not dismiss her petition because collateral consequences persist. *Spencer v. Kemna*, 523 U.S. 1, 7, 14 (1998). Ramirez-Ortez's second removal triggered a twenty-year period of inadmissibility, meaning she cannot become a lawful permanent resident for twenty years. 8 U.S.C. § 1182(a)(9)(A)(ii). The court has

previously held that "the bar on readmission of a removed alien is a legally cognizable collateral consequence that preserves a live controversy even after deportation of the petitioner." *Zalawadia v. Ashcroft*, 371 F.3d 292, 297–98 (5th Cir. 2004). However, the petitioner in *Zalawadia* was challenging his deportation order. *Id.* Ramirez-Ortez does not challenge her removal order; she challenges the BIA's decision to deny her withholding of removal and CAT protection. Her proposed collateral consequence, twenty years of inadmissibility, arises from her removal order, not from the BIA's denial of relief. Even if Ramirez-Ortez succeeds on this petition, she is still subject to the bar on readmission. *See Kaur v. Holder*, 561 F.3d 957, 959 (9th Cir. 2009) ("[T]he alleged collateral consequence of inadmissibility does not arise from the withholding decision.").

Ramirez-Ortez argues that her position is different because she can seek a waiver of inadmissibility, relying on *Blandino-Medina v. Holder,* 712 F.3d 1338, 1342 (9th Cir. 2013). Given the unique procedural posture of this petition, in which Ramirez-Ortez can continue to seek relief before the agency, the court finds this argument unavailing. Ramirez-Ortez's other proffered collateral consequence fares no better. She argues that the government might move to terminate the removal proceedings below if the petition is dismissed as moot, denying her the opportunity for review. However, a collateral consequence must stem from the underlying cause of action. *Spencer*, 523 U.S. at 14. The possible termination of her new removal proceedings would be unrelated to the BIA's denial of relief from a prior removal order.

Ramirez-Ortez also argues that a favorable ruling on this petition will influence the outcome of her new removal proceedings. In other words, she seeks an advisory opinion, which the court will not provide. *Flast v. Cohen*, 392 U.S. 83, 97 (1968). In the alternative, she argues that her situation is capable of repetition yet evades review, warranting the court's continued jurisdiction.

See Murphy v. Hunt, 455 U.S. 479, 482 (1982). Ramirez-Ortez's claims for relief, however, are not foreclosed from review. Her claims are currently before the agency, and if the agency below denies her relief and issues a final removal order, she can contest the agency's decision before this court. 8 U.S.C. § 1252(a).

For the foregoing reasons, both this petition and the pending motion to stay deportation are DISMISSED as moot.