United States Court of Appeals for the Fifth Circuit

No. 25-60559

United States Court of Appeals
Fifth Circuit
FILED
September 4, 2026
Lyle W. Cayce
Clerk

Wilberforce Okene,

Petitioner,

versus

Todd Wallace Blanche, *U.S. Attorney General*,

Respondent.

Petition for Review of an Order of the
Board of Immigration Appeals
Agency No. A099 273 567

Before Jones, Southwick, and Willett, *Circuit Judges*.

Edith H. Jones, *Circuit Judge*:

Petitioner Wilberforce Okene seeks review of a Board of Immigration Appeals ("BIA") decision affirming an Immigration Judge's ("IJ") denial of relief under 8 U.S.C. § 1229b. The petition for review is DENIED.

BACKGROUND

Wilberforce Okene is a native and citizen of Nigeria. He entered the United States in December 2004 and overstayed his business visa set to expire in March 2005. In 2007, the Department of Homeland Security ("DHS") charged him as deportable, and he later conceded removability at a hearing in 2008. In 2012, Okene applied for cancellation of removal, 8 U.S.C. § 1229b(b)(1), and special cancellation of removal under the Violence Against Women Act ("VAWA"), 8 U.S.C. § 1229b(b)(2). In 2021, the IJ held a merits hearing. Okene, along with his wife, adult daughter, adult son, and psychologist testified in support of cancellation. Okene bases his cancellation and special cancellation claims primarily on 1) his current wife's medical condition and resulting financial difficulties and 2) his former wife's domestic abuse, respectively.

Approximately a week before his visa expired, Okene married Nicole Martin, a United States citizen. The marriage was short-lived as Martin began to mistreat Okene. They divorced less than two years later in 2007.[1] In 2012, Okene remarried his first wife, Atebo Okene, a United States citizen.[2] Atebo is Okene's current wife. She receives treatment and takes medication for several medical conditions. Okene helps to financially support the household through the money he earns as a real estate agent, substitute teacher, and owner of an 18-wheeler logistics and transportation business.

After the merits hearing and consideration of the evidence in the record, the IJ denied relief. The BIA adopted and affirmed the IJ's decision in full. Okene petitioned for review.

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[1] A little over a month after Okene's divorce from Martin, he married Cynthia Roberts, a United States citizen. They divorced four years later in 2011.

[2] Okene and Atebo married in Nigeria in 1996. Okene claims they were divorced before he arrived in the United States, however U.S. Citizenship and Immigration Services determined that they were still married at the time of his second and third marriages. Atebo arrived in the United States in 2003. She had her share of marriages to United States citizens before becoming a naturalized citizen in 2012. About one week later, Okene and Atebo remarried.

STANDARD OF REVIEW

"We typically review only the BIA's decision." *Fuentes-Pineda v. Bondi*, 170 F.4th 914, 917 (5th Cir. 2026). However, by explicitly adopting the IJ's decision and citing *Matter of Burbano*, 20 I. & N. Dec. 872, 874 (BIA 1994), the BIA effectively preserved the IJ's decision for review. *See Mikhael v. INS*, 115 F.3d 299, 302 (5th Cir. 1997).

DISCUSSION

Okene argues that the BIA erred by 1) summarily affirming the IJ's order, 2) denying his claim for cancellation of removal, and 3) denying his claim for special cancellation of removal. We address each issue in turn.

I. Summary Affirmance[3]

"This court reviews questions of law, such as the BIA's application of the appropriate legal standard, *de novo*." *Parada-Orellana v. Garland*, 21 F.4th 887, 893 (5th Cir. 2022). Okene argues that although the BIA identified the proper standard of review as *de novo*, the BIA's adoption and affirmance of the IJ's decision cannot be *de novo* review. Okene is mistaken. He insists that summary affirmance is inappropriate in this context when "Petitioner's reliefs are primarily statutory, not discretionary," yet provides no case law in support of this proposition. He fails to identify any language in the BIA's decision indicating that it did not apply *de novo* review when appropriate. And although he argues that *de novo* review and summary affirmance are "inherently contradictory," *Matter of Burbano* explains why this is untrue:

> [O]ur independent review authority does not preclude the Board from adopting or affirming a decision of the immigration

[3] Okene repeats this argument throughout his brief. This section addresses each of those reiterations.

> judge, in whole or in part, when we are in agreement with the reasoning and result of that decision. In this situation, the Board's final decision may be rendered in a summary fashion; however, such summary treatment of a case does not mean that we have conducted an abbreviated review of the record or have failed to exercise our own discretion. Rather, it is simply a statement that the Board's conclusions upon review of the record coincide with those which the immigration judge articulated in his or her decision.

20 I. & N. Dec. 872, 874 (BIA 1994).

Therefore, the BIA did not err by summarily affirming the IJ decision in accordance with our precedent. *See Soadjede v. Ashcroft*, 324 F.3d 830, 832 (5th Cir. 2003) (per curiam) ("This court has previously joined the majority of circuits in approving the authority of the BIA to affirm the immigration judge's decision without giving additional reasons.").

II. 8 U.S.C. § 1229b

A. Standard of Review

Under 8 U.S.C. § 1252(a)(2)(B)(i), "no court shall have jurisdiction to review . . . any judgment regarding the granting of relief under section . . . 1229b . . . of this title." However, 8 U.S.C. § 1252(a)(2)(D) exempts "constitutional claims" and "questions of law" from this jurisdictional bar. These "questions of law" include mixed questions of law and fact. *Wilkinson v. Garland*, 601 U.S. 209, 218–19, 144 S. Ct. 780, 788 (2024). Questions of fact and factual findings "which formed the basis for the denial of relief" are unreviewable. *Id.* at 219–21, 144 S. Ct. at 788–90.

Under *Wilkinson*, mixed questions that are "primarily factual" and "require[] a court to immerse itself in facts" are reviewable, but deserve a "more deferential standard of review." *Id.* at 222, 225, 144 S. Ct. at 790, 793. This court has previously acknowledged that whether the petitioner meets the standard for cancellation of removal or special cancellation of removal are mixed questions subject to a deferential review. *See Simantov v. Bondi*, 155 F.4th 383, 390, 393 (5th Cir. 2025); *Calderon-Uresti v. Bondi*, 158 F.4th 663, 668 (5th Cir. 2025) ("[W]e can review the BIA's application of the § 1229b eligibility criteria to the record."). However, the *Simantov* court declined to determine the exact degree of deference owed to the agency. 155 F.4th at 390 n.3. Recently, the Supreme Court spoke to this uncertainty shared by our fellow circuits.

In *Urias-Orellana v. Bondi*, the Supreme Court addressed the appropriate standard of review for the agency's persecution determination for asylum eligibility. 607 U.S. 537, 539, 146 S. Ct. 845, 847–48 (2026). The Supreme Court clarified that 8 U.S.C. § 1252(b)(4)(B) "requires courts to review the entirety of the agency's conclusions—both the underlying factual findings and the application of the [Immigration and Nationality Act ("INA")] to those findings—for substantial evidence." *Id.* at 545, 146 S. Ct. at 851. The Supreme Court's reasoning was not limited to the asylum context. *See Baltazar Us v. Blanche*, 174 F.4th 509, 512 (6th Cir. 2026) ("*Urias-Orellana*'s reasoning was not limited to the asylum context, however; it contemplates the same standard of review for any kind of mixed determination involving the application of the INA to a given set of established facts reviewed under § 242 of that statute."). Section 1252(b)(4) addresses the scope and standard for review that "the courts of appeals must apply when evaluating IJ and BIA removal orders." *Urias-Orellana*, 607 U.S. at 543, 146 S. Ct. at 850. Section 1252(b)(4) does not specify any category of relief. Accordingly, the Supreme Court contemplated the substantial-evidence standard for "application of the statute to [the IJ's factual] findings" generally. *Id.* at 549, 146 S. Ct. at 853.

Cancellation and special cancellation involve fact-intensive mixed questions that require application of INA § 240A, codified at 8 U.S.C. § 1229b. In the wake of *Urias-Orellana*, we join other circuits in adopting a substantial-evidence standard of review for hardship determinations under § 1229b(b)(1). *See Baltazar Us*, 174 F.4th at 512–13 (applying a substantial-evidence standard for review of cancellation-of-removal hardship determinations); *Perez-Castillo v. Blanche*, 177 F.4th 837, 842 (7th Cir. 2026) ("The unanimous Supreme Court recently explained [that] . . . [m]ixed questions of law and fact—like the question of exceptional and extremely unusual hardship in this case—are reviewed for 'substantial evidence.'" (quoting *Urias-Orellana*, 607 U.S. at 545, 146 S. Ct. at 851)).[4]

We also adopt a substantial-evidence standard of review for the battery/cruelty and extreme hardship determinations under § 1229b(b)(2). Prior to *Urias-Orellana*, application of the substantial-evidence standard in the special-cancellation context was not foreign to this court. *See Calderon-*

[4] Other circuits already apply a substantial-evidence standard in the context of cancellation of removal without reliance on *Urias-Orellana*. *See, e.g.*, *Wilkinson v. Att'y Gen. U.S.*, 131 F.4th 134, 138–42 (3d Cir. 2025) (holding that "the substantial-evidence standard governs review of a hardship determination in a cancellation-of-removal proceeding" because "Supreme Court precedent suggests that substantial evidence is the appropriate standard" (citing *U.S. Bank Nat'l Ass'n ex rel. CWCapital Asset Mgmt. LLC v. Vill. at Lakeridge, LLC*, 583 U.S. 387, 138 S. Ct. 960 (2018) and *Monasky v. Taglieri*, 589 U.S. 68, 140 S. Ct. 719 (2020))); *Alonso-Juarez v. Bondi*, 169 F.4th 789, 795–96 (8th Cir. 2026) (describing substantial evidence as the "default standard for reviewing factual findings of all kinds in immigration proceedings" and deciding that "review of the hardship determination is for substantial evidence"); *Gonzalez-Juarez v. Bondi*, 137 F.4th 996, 1002 (9th Cir. 2025) ("Applying the substantial evidence standard of review [to the BIA's exceptional and extremely unusual hardship determination] is consistent with how we have long reviewed other eligibility determinations."); *Lopez-Martinez v. U.S. Att'y Gen.*, 149 F.4th 1202, 1210–11 (11th Cir. 2025) ("[W]e review for substantial evidence the question whether the found facts in the administrative record (which, again, we lack jurisdiction to second-guess) add up to an 'exceptional and extremely unusual hardship' within the meaning of § 1229b(b)(1)(D).").

Uresti, 158 F.4th at 669–70 (determining that the BIA's conclusion that "the record did not establish statutory eligibility for special rule cancellation" is "supported by substantial evidence"). Hardship under cancellation, and battery/cruelty and hardship under special cancellation, are all fact-intensive, mixed questions that require application of INA § 240A. We see no reason to adopt substantial evidence for hardship determinations under cancellation and decline to do so for questions of a similar nature under special cancellation.

The court will not review the IJ's factual findings. *See Patel v. Garland*, 596 U.S. 328, 339, 142 S. Ct. 1614, 1623 (2022) ("[J]udicial review of factfinding is unavailable."). The court will review the agency's hardship and battery/cruelty determinations for substantial evidence. Under substantial-evidence review, the agency's determination is "conclusive unless any reasonable adjudicator would be compelled to conclude to the contrary." *Urias-Orellana*, 607 U.S. at 545, 146 S. Ct. at 851 (quoting 8 U.S.C. § 1252(b)(4)(B)).

B. Cancellation of Removal

Cancellation of removal is a form of discretionary relief, allowing an IJ to cancel removal and adjust an alien's status to "lawfully admitted for permanent residence." 8 U.S.C. § 1229b(b)(1). An applicant must show that (1) he has been physically and continually present in the United States for at least ten years immediately preceding his application; (2) he has been a person of good moral character; (3) he has not been convicted of certain enumerated offenses; and (4) his "removal would result in exceptional and extremely unusual hardship to" a qualifying relative, including a spouse who is a citizen of the United States. *Id.* After determining that the applicant meets these criteria, an IJ proceeds to a second step and "decides whether to exercise discretion to cancel the order of removal in a particular case." *Wilkinson*, 601 U.S. at 213, 144 S. Ct. at 785.

The IJ, "[w]hile sympathetic," held that Okene "failed to meet his burden of proving that his removal would result in exceptional and extremely unusual hardship to his United States citizen spouse." Okene argues that he has met this burden due to his wife's serious medical condition and resulting financial difficulties. We disagree.

The IJ found the following: Atebo's medical conditions are under control; she receives medical insurance through her employer; she owns a home; her salary covers insurance and the mortgage payment, while Okene covers her credit card debt and medication; she has a network of support, including two adult children who are United States citizens. These factual findings are unreviewable. *See Wilkinson*, 601 U.S. at 225, 144 S. Ct. at 792 ("[A]n IJ's factfinding on . . . the seriousness of a family member's medical condition[] or the level of financial support a noncitizen currently provides remain unreviewable."); *Perez-Padilla v. Bondi*, No. 25-60497, 2026 WL 851967, at *1 (5th Cir. Mar. 27, 2026) (per curiam) ("[F]actual findings . . . such as the financial and emotional impact on his family if he were removed . . . are unreviewable.").

As expected, Okene's absence would cause financial and emotional suffering for his wife. However, he has not demonstrated that his deportation would cause hardship "substantially different from or beyond that which would ordinarily be expected from the deportation of a close family member." *Cuenca-Arroyo v. Garland*, 123 F.4th 781, 785 (5th Cir. 2024) (per curiam) (quoting *Wilkinson*, 601 U.S. at 222, 144 S. Ct. at 790). Based on the record, a reasonable adjudicator would not be compelled to conclude that Atebo would suffer from "exceptional and extremely unusual hardship" in the event of Okene's removal.

C. Special Cancellation of Removal

An applicant for special cancellation must show that (1) he has been "battered or subjected to extreme cruelty" by a spouse who is a United States citizen or lawful permanent resident; (2) he has been physically and continuously present in the United States for at least three years immediately preceding his application; (3) he has been a person of good moral character; (4) he has not been convicted of certain enumerated offenses; and (5) his removal would result in "extreme hardship" to him, a child, or a parent. 8 U.S.C. § 1229b(b)(2)(A). "If the applicant meets these statutory eligibility criteria, the IJ must then decide whether to exercise discretion favorably toward the applicant and grant relief in his particular case." *Simantov*, 155 F.4th at 391 (citing *Wilkinson*, 601 U.S. at 212–13, 144 S. Ct. at 785).

Okene challenges the BIA's affirmance of the IJ's battery/cruelty and hardship determinations. The IJ held that the harm suffered at the hands of his former wife does not meet the standard for battery or extreme cruelty. The IJ also held that the evidence does not support a finding that either Okene or his wife would suffer extreme hardship.

Okene grounds his claim for special cancellation on his abusive marriage to Nicole Martin. The IJ found the following regarding Martin's abuse: she was unfaithful to Okene; Okene witnessed her with another man on at least two occasions; she threatened to report Okene to immigration authorities; she banned him from cooking African food; Okene received a "minor" burn by Martin with an iron; she discouraged Okene's church attendance; she withheld sexual relations unless Okene gave her money; she insulted and verbally abused Okene. The IJ found these facts to be insufficient due to the "little physical violence," Okene's ability to maintain his autonomy during the relationship,[5] and the lack of connection between the abuse and Okene's anxiety and depression.[6] Again, these factual findings are unreviewable. *Wilkinson*, 601 U.S. at 219–21, 144 S. Ct. at 788–90.

Regarding battery and extreme cruelty, the Code of Federal Regulations provides that

> the phrase "was battered by or was the subject of extreme cruelty" includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence.

8 C.F.R. § 204.2(c)(1)(vi). Although Okene was undoubtedly mistreated by Martin, "threats of deportation, name-calling, [and] bullying . . . are a far cry from the acts of physical violence, rape, and forceful detention that are described in the statute." *Simantov*, 155 F.4th at 393. Based on the record, a reasonable adjudicator would not be compelled to conclude that Okene was subjected to battery or extreme cruelty because the "statutory language . . . describes a range of conduct that surpasses [Okene]'s ex-wife's conduct." *Id.*

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[5] Okene retained control over his money and the freedom to travel and attend church.

[6] Okene's psychologist testified that Okene is not currently taking any medication for anxiety or depression and that these conditions are the result of the immigration proceedings rather than Martin's abuse.

Okene's failure to successfully challenge the BIA's affirmance of the IJ's battery or extreme cruelty determination under a substantial-evidence standard is dispositive. Therefore, we decline to reach Okene's hardship argument for special cancellation relief.

The petition for review is DENIED.