United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
October 30, 2026
Thomas B. Plunkett, III
Clerk

No. 26-60044

GRECIA JOSEFINA PEREZ ROJAS,

Petitioner,

versus

TODD WALLACE BLANCHE, *U.S. Attorney General*,

Respondent.

Petition for Review of an Order of the
Board of Immigration Appeals
Agency No. A245 540 699

Before ELROD, *Chief Judge*, and KING and STEWART, *Circuit Judges*.

PER CURIAM:[*]

Petitioner Grecia Josefina Perez Rojas, a native and citizen of Venezuela, entered the United States on December 2, 2023, without inspection or valid entry documentation. After her applications for asylum, withholding of removal, and protection under the Convention Against Torture were denied by an immigration judge, she was ordered removed on December 18, 2024. Perez Rojas's appeal of this decision to the Board of

[*] This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

Immigration Appeals (BIA) was summarily dismissed as untimely. Perez Rojas now petitions for review of the BIA's decision dismissing her appeal.[1] Because the record before the BIA was insufficient to determine whether equitable tolling is appropriate, the petition for review is GRANTED and the case is REMANDED.

I

Petitioner Perez Rojas is a native and citizen of Venezuela who entered the United States on December 2, 2023, without inspection and without valid entry documentation. Two days later, the Department of Homeland Security commenced removal proceedings against Perez Rojas under 8 U.S.C. § 1182(a)(6)(A)(i) as an alien present in the United States without having been admitted or paroled. Perez Rojas applied for asylum, withholding of removal, and protection under the Convention Against Torture. An immigration judge denied her applications and ordered her removed to Venezuela on December 18, 2024. The deadline to appeal this order was January 17, 2025.

On January 13, 2025, Perez Rojas timely filed a notice of appeal from the immigration judge's decision. The BIA rejected this appeal the following day because Perez Rojas failed to include her signature or a certificate of service. The notice of rejection stated that any corrected appeal must be filed within 15 days from the date of the notice.

Perez Rojas refiled a notice of appeal on March 6, 2025. Attached to the notice were several documents, including: an affidavit from Perez Rojas requesting that the BIA accept her late filing and stating that she did not have access to the mailbox in which the rejection notice was sent until February 22, 2025; a letter from her apartment complex corroborating her affidavit;

[1] Although the BIA's decision dismissed an appeal by Perez Rojas and one of her minor children, Perez Rojas's petition for review lists only herself as the Petitioner.

and letters from a hospice facility and the Texas Children's Hospital stating that Perez Rojas had been caring for her terminally ill child Nevertheless, the BIA summarily dismissed Perez Rojas's appeal on January 14, 2026, because of her failure to timely cure the defects in her notice of appeal. In its decision, the BIA noted that Perez Rojas's inability to access her mailbox did not constitute an extraordinary circumstance justifying equitable tolling because an alien is required to provide an address where they can receive mail. *See* 8 U.S.C. § 1229(a)(1)(F); 8 C.F.R. § 1003.15(d)(2). The BIA did not address whether Perez Rojas's child's terminal cancer diagnosis and months long stay in the pediatric intensive care unit constituted an extraordinary circumstance.

II

In *Mata v. Lynch*, the Supreme Court clarified that we have jurisdiction over immigration appeals seeking equitable tolling. 576 U.S. 143, 149–50 (2015). While this was not always our practice, we now assert jurisdiction over these appeals. *See Lugo-Resendez v. Lynch*, 831 F.3d 337, 343 (5th Cir. 2016) (offering a fuller discussion of the history of jurisdiction over equitable tolling appeals).

We review the BIA's summary dismissal of an appeal for an abuse of discretion. *Rioja v. Ashcroft*, 317 F.3d 514, 515 (5th Cir. 2003).

An appeal from an immigration judge's decision must be filed with the BIA "within 30 calendar days . . . of an [i]mmigration [j]udge's oral decision or the mailing or electronic notification of an [i]mmigration [j]udge's written decision." 8 C.F.R. § 1003.38(b). The BIA may equitably toll the deadline to file an appeal if (1) the alien pursued her claim with diligence and (2) "some extraordinary circumstance stood in [her] way and prevented timely filing." *Gonzalez-Cantu v. Sessions*, 866 F.3d 302, 305 (5th Cir. 2017) (citing *Lugo-Resendez v. Lynch*, 831 F.3d at 344). The first element requires only

"reasonable diligence," not "maximum feasible diligence." *Lugo-Resendez*, 831 F.3d at 344 (quoting *Manning v. Epps*, 688 F.3d 177, 183 (5th Cir. 2012)). The second element requires that the "extraordinary circumstance" be beyond the alien's control and that it prevent them from complying with the applicable deadline. *Id.* (quoting *In re Wilson*, 442 F.3d 872, 875 (5th Cir. 2006)).

III

Perez Rojas asserts that the BIA abused its discretion by dismissing her appeal without fully considering whether there existed extraordinary circumstances justifying equitable tolling.[2] Perez Rojas provided evidence of her inability to access her mailbox and her infant child's terminal cancer diagnosis and months long hospital stay, claiming that those were extraordinary circumstances that prevented her from timely appealing. We review the BIA's decision to not apply equitable tolling.

Beginning with the first prong, there is no dispute that Perez Rojas pursued her appeal with at least "reasonable diligence." *See Lugo-Resendez*, 831 F.3d at 344 (quoting *Manning*, 688 F.3d at 183). Turning to the second prong, the parties disagree as to whether Perez Rojas has established the existence of an extraordinary circumstance beyond her control.

While we recognize that equitable tolling is only used in "rare and exceptional circumstances," *United States v. English*, 400 F.3d 273, 275 (5th Cir. 2005) (quoting *Davis v. Johnson*, 158 F.3d 806, 811 (5th Cir. 1998)), we also note that "the doctrine of 'equitable tolling does not lend itself to bright-

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[2] We note that Perez Rojas also asserts a due process claim. However, we do not review that claim because it relates to her proceeding in front of the immigration judge. "Our court reviews only the BIA's decision unless the BIA expressly adopted the [immigration judge]'s reasoning." *Bonilla Rivas v. Bondi*, 2025 WL 3124838, at *2 (5th Cir. Nov. 7, 2025) (citing *Enriquez-Gutierrez v. Holder*, 612 F.3d 400, 407 (5th Cir. 2010)).

line rules.'" *Lugo-Resendez*, 831 F.3d at 344 (quoting *Fisher v. Johnson*, 174 F.3d 710, 713 (5th Cir. 1999)). We have long held that "[c]ourts must consider the individual facts and circumstances of each case in determining whether equitable tolling is appropriate." *Id.* at 344–45 (quoting *Alexander v. Cockrell*, 294 F.3d 626, 629 (5th Cir. 2002)).

Here, the BIA did not consider Perez Rojas's individual circumstances. Perez Rojas provided a letter from hospice and from the hospital confirming that her young child was terminally ill during the pendency of her case and stating that Perez Rojas needed to provide around the clock care to her child. The letters also clarified that Perez Rojas's infant child had been admitted to the pediatric intensive care unit on December 2, 2024, and remained admitted, for the duration of the case. The BIA made no mention of those facts when summarily denying Perez Rojas's appeal as untimely. The BIA's failure to address this argument in its summary dismissal constituted an abuse of discretion. *See id.* at 343 ("[T]he BIA abused its discretion by ignoring Lugo-Resendez's equitable tolling argument.").

Accordingly, the proper course is to remand to the BIA for further factual development and determination of the issue. *See id.* at 344 (quoting *Rivera v. Quarterman*, 505 F.3d 349, 354 (5th Cir. 2007)); *see also Barajas-Flores v. Sessions*, 702 F. App'x 193, 195 (5th Cir. 2017) (remanding for consideration of whether equitable tolling is appropriate).

IV

Perez Rojas's petition for review is GRANTED, and we REMAND for consideration of whether equitable tolling is appropriate.