NONPRECEDENTIAL DISPOSITION
To be cited only in accordance with Fed. R. App. P. 32.1

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Submitted November 7, 2023*
Decided November 15, 2023

Before

FRANK H. EASTERBROOK, *Circuit Judge*

DIANE P. WOOD, *Circuit Judge*

AMY J. ST. EVE, *Circuit Judge*

Nos. 20-3512 & 22-2996

RUBEN CABRERA,
Petitioner,

v.

MERRICK GARLAND, Attorney General of the United States,
Respondent.

Petitions for Review of Orders of the Board of Immigration Appeals.

No. A087-137-312

O R D E R

Ruben Cabrera is a citizen of Mexico who came to the United States in 1992 in search of a better life. In 2008, he married Anita, a U.S. citizen. Since then, Cabrera has supported his family financially through regular employment. Anita has been a full-time caretaker for the couple's two sons. The Department of Homeland Security issued Cabrera a Notice to Appear in 2009, charging him with removability under 8 U.S.C.

* The parties jointly moved to waive oral argument, and we granted that motion. The case is thus submitted on the briefs and record. See FED. R. APP. P. 34(f).

§§ 1182(a)(6)(A)(i) (entering the United States without being admitted or paroled) and 1182(a)(6)(C)(ii) (falsely representing himself as a U.S. citizen for purposes of a benefit under the immigration laws). Cabrera appeared *pro se* before an immigration judge, who sustained the charge. At the same time, the judge continued the case so that Cabrera could file an application for cancellation of removal.

After some interim proceedings, Cabrera did so. He appeared for a merits hearing on the application on October 25, 2018 (an impressive nine years after the original Notice to Appear). His eligibility for relief depended on several factors: first, he had to show that he had been continuously present in the United States for at least ten years; second, he had to demonstrate that he had been a person of "good moral character" during that period and had not been convicted of certain crimes; and third, he had to show that his removal would cause exceptional and extremely unusual hardship to a qualifying U.S.-citizen relative (his spouse, parent, or child). 8 U.S.C. § 1229b(b). The Department accepted the fact that he could establish the first and second requirements. It did so notwithstanding the fact that Cabrera admitted that he had falsely claimed to be a U.S. citizen in order to gain employment. The immigration judge thus found that Cabrera had proven the necessary good moral character.

Nonetheless, the judge held that Cabrera failed to establish the third requirement: exceptional and extremely unusual hardship to his U.S. relative. Cabrera had identified three hardships: his elder son's need for speech therapy, Anita's diagnosed anxiety about Cabrera's removal, and his family's financial reliance on him. The judge held that Cabrera's son could continue to receive speech therapy in the United States if Cabrera were removed; that Anita's diagnosis was "not out of the ordinary for a spouse whose husband is in removal proceedings"; and that although Anita did not have a job, there was no evidence that she would not be able to find one. (Apparently she had received some computer training years ago, in 2009, but she has not worked since the children were born.) The judge also held that even if Cabrera had established all the requirements for cancellation of removal, the judge would exercise his discretion to deny the petition.

Cabrera appealed to the Board of Immigration Appeals, which affirmed the immigration judge's decision. It reasoned that Cabrera's testimony at the hearing fell short of establishing that he would be unable to support his family financially from Mexico. Cabrera then sought to reopen proceedings to introduce new evidence of hardship, including the effects of the COVID-19 pandemic on the family's wellbeing and Anita's diagnosis of a more severe anxiety disorder. Cabrera filed his motion three days late, however. See 8 U.S.C. § 1229a(c)(7)(C). Although the Board still could have

reopened the case *sua sponte*, 8 C.F.R. § 1003.2(a), it declined to do so. It held that Cabrera's new evidence of hardship would not change the outcome of the Board's previous analysis and that, even if it did, becoming eligible for cancellation after a final order of removal was not an exceptional circumstance that warranted reopening.

Cabrera challenges the Board's denial of his application for cancellation of removal and the consequent denial of his motion to reopen. We generally lack jurisdiction to review a discretionary denial of immigration relief, 8 U.S.C. § 1252(a)(2)(B), but we retain jurisdiction to review questions of law, 8 U.S.C. § 1252(a)(2)(D).

Whether alleged hardships satisfy the "exceptional and extremely unusual" criterion raises a question on this record of the "application of law to undisputed facts." *Cruz-Velasco v. Garland*, 58 F.4th 900, 903 (7th Cir. 2023) (quoting *Arreola-Ochoa v. Garland*, 34 F.4th 603, 610 (7th Cir. 2022)). We have held that such a question is one of law, and that it thus falls within our jurisdiction. *Id.* We do not doubt that removal would cause hardship to Cabrera's family. But the statute requires hardship "substantially different from, or beyond, that which would be normally expected from the deportation of an alien with close family members in the United States." *Martinez-Baez v. Wilkinson*, 986 F.3d 966, 975 (7th Cir. 2021). The financial and emotional hardships Cabrera identified are "regrettably common" in removal cases, *Arreola-Ochoa*, 34 F.4th at 603, (or so the Board could find), and the Board was also within bounds to conclude that there is no indication that Cabrera's removal would prevent his son from continuing to receive speech therapy. The Board thus "was entitled to find, as it did, that there is nothing 'exceptional' and 'extreme' about" the hardships facing Cabrera's family. *Id.*

The Board's decision not to reopen proceedings *sua sponte* is unreviewable unless tainted by legal error. *Cruz-Velasco*, 58 F.4th at 904. In this context, "legal error" refers to "constitutional transgressions and other legal errors that the Board may have committed in disposing of such a motion," including "whether the Board's 'stated rationale for denying such a motion' indicates that it ignored evidence that the alien tendered in support of his request' or misapprehended the basis for the motion." *Hernandez-Alvarez v. Barr*, 982 F.3d 1088, 1097–98 (7th Cir. 2020) (quoting *Fuller v. Whitaker*, 914 F.3d 514, 519, 522 (7th Cir. 2019)). We see no such flaws in this record. Cabrera argues that the Board did not weigh the new evidence he presented, but the Board correctly identified the new evidence and decided that it did not warrant reopening. Cabrera essentially asks us to review the merits of that decision, but we lack jurisdiction to do so. *Id.*

We therefore DENY the petition for review of the Board's denial of cancellation of removal and DISMISS the petition to review the Board's refusal to reopen proceedings.