NONPRECEDENTIAL DISPOSITION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

Argued September 14, 2022
Decided February 28, 2024

Before

FRANK H. EASTERBROOK, *Circuit Judge*

ILANA DIAMOND ROVNER, *Circuit Judge*

AMY J. ST. EVE, *Circuit Judge*

No. 21-3283

JOSE TRUJILLO-SANCHEZ,
Petitioner,

v.

MERRICK B. GARLAND, Attorney General,
Rspondent.

Petition to Review an Order of the Executive Office for Immigration Review.

No. A044 358 123.

O R D E R

Jose Trujillo-Sanchez, a citizen of Mexico, was removed from the United States in 1999 after being convicted of drug offenses. He promptly reentered by fraud, presenting a document (a "green card") that had been revoked as part of the prior year's proceedings. Reentry requires the Attorney General's approval, which Trujillo-Sanchez did not request. Immigration agents took him into custody after another conviction alerted them to his presence in the United States. Officials reinstated the 1999 order of removal. See 8 U.S.C. §1231(a)(5). Trujillo-Sanchez did not protest; indeed, he conceded that reinstatement was proper. Nor did he seek judicial review of the reinstatement under 8 U.S.C. §1252(a)(1), (5). But he did apply for withholding of removal, contending that his

former criminal associates in Mexico would assume that he is now cooperating with law enforcement in the United States and would target him for harm.

Title 8 does not provide any way for an alien whose order of removal has been reinstated to seek withholding. Section 1231(a)(5) expressly forbids relief under the statute. But regulations implementing treaty obligations of the United States establish a means to obtain non-statutory withholding of removal. The alien may present evidence (including testimony) to an asylum officer, who will determine whether the alien has a "reasonable fear" of persecution or torture in his home nation. 8 C.F.R. §241.8(e). If the asylum officer finds that the alien has such a reasonable fear, the case proceeds to a full evidentiary hearing before an immigration judge. If the asylum officer rules against the alien, review by an IJ follows. If the IJ finds that the alien has a reasonable fear of persecution or torture, the case proceeds to a full hearing; if the IJ answers no, that concludes the administrative process. Consistent with the goal of expediting removal of aliens who reenter despite removal orders, see §1231(a)(5); 8 C.F.R. §208.31(e)–(g), an IJ's adverse decision is not subject to review by the Board of Immigration Appeals. 8 C.F.R. §§ 208.31(g)(1), 241.8. (Sections 208.31 and 241.8 both have identical counterparts at 8 C.F.R. §§ 1208.31, 1241.8. For simplicity, we cite only the former.)

The agency reinstated Trujillo-Sanchez's removal order on October 29, 2021. Per 8 U.S.C. §1231(a)(5), the 1999 removal order is no longer subject to judicial review. On November 22, 2021, an asylum officer held a reasonable-fear interview. Trujillo-Sanchez was represented by counsel (who participated by phone). The asylum officer ruled on November 24 that Trujillo-Sanchez lacks a reasonable fear of persecution or torture in Mexico, and on December 6 he appeared in person before an IJ, who concluded the same day that Trujillo-Sanchez lacks a reasonable fear. Three days later (December 9, 2021) Trujillo-Sanchez filed a petition for judicial review of the IJ's order. That's timely if measured from the IJ's decision, see 8 U.S.C. §1252(b)(1), and if the IJ's decision is judicially reviewable, but outside the 30-day window if measured from the reinstated order of removal. We held in *F.J.A.P. v. Garland*, No. 21-2284 (7th Cir. Feb. 27, 2024), that the IJ's decision is reviewable, so we move to the merits.

Trujillo-Sanchez's principal argument is that he is ineligible for reinstatement of a removal order because he was "lawfully admitted" to the United States. This contention assumes that the document Trujillo-Sanchez presented at the border was valid, but it was not. That the agency didn't stamp the document "revoked" or tear it up does not eliminate the alien's need to obtain the approval of the Attorney General before reentry. See *Mendoza v. Sessions*, 891 F.3d 672 (7th Cir. 2018).

Next Trujillo-Sanchez asserts that the Department of Homeland Security lacks authority to reinstate removal orders, because that power remains vested in the

Department of Justice. This argument is unavailing because on March 1, 2003, authority over the administration of the immigration laws was divided, and the functions previously performed by the Immigration and Naturalization Service (part of the Department of Justice) were transferred to the newly-created Department of Homeland Security. See Homeland Security Act of 2002, Pub. L. No. 107-296, §§ 471, 1502, 116 Stat. 2135, 2205, 2308 (Nov. 25, 2002) (codified at 6 U.S.C. §§ 291, 542, 557); *Villa v. Barr*, 924 F.3d 370 (7th Cir. 2021).

Nor can Trujillo-Sanchez get any mileage out of his argument that the reinstatement violated the Due Process Clause of the Fifth Amendment. He received notice and an opportunity to respond but conceded that reinstatement is proper. He cannot rescind this consent by asking a court of appeals to ignore it. More: he was represented by counsel before the agency and does not identify any procedural entitlement not afforded to him.

Finally, Trujillo-Sanchez contends that officials "incorrectly" found that he has not established a reasonable fear of harm in Mexico. The word "incorrectly" is telling, because it is the language of an independent judicial decision. But the right question is whether the agency's resolution is supported by substantial evidence, which means that the agency's "findings of fact are conclusive unless any reasonable adjudicator would be compelled to conclude to the contrary." *Nasrallah v. Barr*, 140 S. Ct. 1683, 1692 (2020) (citations omitted). Trujillo-Sanchez does not contend that this decision was unsupported by substantial evidence, and our reading of the papers does not leave us with a conviction that every reasonable adjudicator must disagree with the decision.

The petition for review is denied.