NONPRECEDENTIAL DISPOSITION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 April 4, 2024
Decided April 17, 2024

Before

FRANK H. EASTERBROOK, *Circuit Judge*

DAVID F. HAMILTON, *Circuit Judge*

JOSHUA P. KOLAR, *Circuit Judge*

No. 23-3006

JULIO C. VIDES-VIDES,
Petitioner,

v.

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

Petition for Review of an Order of the Board of Immigration Appeals.

A208-548-070

O R D E R

Julio Vides-Vides, a native of El Salvador, entered the United States without inspection in November 2015. He was later apprehended and served with a Notice to Appear. Vides conceded his removability but applied for asylum under section 208(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1158(b)(1)(A); withholding of removal under section 241(b)(3)(A) of the Act, 8 U.S.C. § 1231(b)(3)(A); and protection under regulations implementing the Convention Against Torture.

With regard to asylum and withholding of removal, Vides claimed he was a member of five particular social groups whose mistreatment could amount to persecution: Salvadorans who have opposed or resisted gangs; Salvadorans who have opposed a gang known as the MS; Salvadorans who have reported criminal groups to law enforcement; family; and Vides' own family. He asserted that he had been persecuted in the past and feared further persecution in the future because of his membership in these social groups.

Vides identified two instances of past persecution. First, in 2010, Vides claimed that individuals threatened him because they believed he was a policeman. They let Vides leave after another person vouched that Vides was not a policeman. Second, in 2015, purported gang members held a gun to Vides' head and told him they would kill him if he did not help them traffic drugs. Vides testified that the gang members targeted him because he was a "quiet, serious, [and] a good person" who would not be suspected of selling drugs. As in the first incident, Vides was allowed to leave without suffering physical harm. Vides later reported this second incident to police.

The immigration judge denied Vides' application in all respects. Regarding asylum and withholding of removal, the judge concluded that Vides failed to establish a nexus between the risk of past or future persecution and a protected ground. The immigration judge also denied Vides' request for relief under the Convention Against Torture because he failed to show that he would more likely than not be tortured if he returned to El Salvador.

Vides appealed the immigration judge's decision to the Board of Immigration Appeals. The Board agreed with the judge's reasoning and dismissed the appeal. Vides filed a timely petition for judicial review in this court.

Vides makes three arguments in support of his petition for review. First, he argues that his initial Notice to Appear had a date-and-time defect that requires termination of his immigration proceedings. Second, he argues that the immigration judge abused his discretion in denying his request to submit late-filed letters in support of his application. Third, Vides argues that the Board of Immigration Appeals applied the wrong standard for determining whether a nexus existed between Vides' alleged persecution and his protected grounds. We reject all three arguments and deny the petition for review.

I. *Notice to Appear*

In *Ortiz-Santiago v. Barr*, 924 F.3d 956, 958 (7th Cir. 2019), we held: "The requirement that a Notice [to Appear] include, within its four corners, the time, date, and place of the removal proceeding is not 'jurisdictional' in nature. It is instead the agency's version of a claim-processing rule, violations of which can be forfeited if an objection is not raised in a timely manner." *Ortiz-Santiago* applies here because Vides received sufficient notice of his actual hearing and in fact appeared to defend himself. Vides asks us to overrule *Ortiz-Santiago*. We have already rejected many such requests in the years since *Ortiz-Santiago* was decided. E.g., *Arreola-Ochoa v. Garland*, 34 F.4th 603, 607–08 (7th Cir. 2022). Vides does not provide a compelling reason to overrule these circuit precedents.

II. *Late-Filed Letters*

At his individual merits hearing on October 3, 2019, Vides tried to submit as evidence two affidavits from family members. The Department of Homeland Security objected to the evidence as untimely. The immigration judge sustained the objection, concluding that the offer was not timely and that Vides did not show good cause for the tardiness.

The immigration judge did not abuse his discretion in rejecting the late affidavits. In addition to the wide discretion that immigration judges possess in setting filing deadlines, Section 3.1(b)(2)(B) of the Immigration Court Practice Manual states that filings for individual hearings involving non-detained non-citizens must be filed at least fifteen days in advance of the hearing.

Vides failed to show good cause for not submitting the two late-filed affidavits in time. Vides' counsel said only that he could not control the actions of family members. That argument falls short of showing good cause that would require an immigration judge to exercise his or her discretion to allow the late filing. It would apply to any late-filed document provided by a third party. Excusing tardiness for this reason as a matter of law would eviscerate the filing deadline.

III. *Standard for Nexus*

The Board of Immigration Appeals agreed with the immigration judge's determination that Vides did not establish "that any past or feared future persecution was or would be on account of a protected ground." In other words, Vides did not

establish the required nexus between any of his claimed social groups and the two incidents of alleged persecution he endured, or that his purported membership in the social groups would be a central reason for persecution in the future.

On judicial review, Vides argues only that the Board of Immigration Appeals applied the wrong standard when determining whether he carried his burden in establishing a nexus. He contends that the Board of Immigration Appeals inquired into the persecutors' motives instead of asking whether one of Vides' protected grounds was a but-for cause of the persecution. Vides concedes that we have long held that proof of motive, whether by direct or circumstantial evidence, is essential to prove persecution. That requirement was set forth in *I.N.S. v. Elias-Zacarias*, 502 U.S. 478, 483 (1992) ("the statute makes motive critical," and petitioner needed to provide "some evidence of it, direct or circumstantial"). We have applied that requirement many times. E.g., *Bueso-Avila v. Holder*, 663 F.3d 934, 937 (7th Cir. 2011) (proof of persecution requires direct or circumstantial evidence that gang was motivated by protected factor).

Vides contends, however, that the Supreme Court's decision in *Bostock v. Clayton County*, 590 U.S. 644 (2020), teaches that motivations should not be considered in but-for causation tests. *Bostock* interpreted Title VII of the Civil Rights Act of 1964, which in relevant part prohibited covered employers from taking actions "because of" an employee's sex.

Elias-Zacarias requires proof of motive and remains the controlling interpretation of the Immigration and Nationality Act, however, and contrary to Vides' argument, *Bostock* in fact left subjective motivation at the center of sex-discrimination cases under Title VII. See *id.* at 656–57, 661–62. We continue to follow *Elias-Zacarias* and circuit precedent in considering motivations in the nexus inquiry. See, e.g., *Granados Arias v. Garland*, 69 F.4th 454, 464 (7th Cir. 2023) (considering motives in the nexus inquiry after *Bostock* was decided).

The petition for review of the decision of the Board of Immigration Appeals is DENIED.