

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

August 2, 2022

FOR THE TENTH CIRCUIT

Christopher M. Wolpert
Clerk of Court

THEWODROS WOLIE BIRHANU, a/k/a
Thewodros Birhanu,

Petitioner,

v.

MERRICK B. GARLAND, United States
Attorney General,

Respondent.

No. 19-9599
(Petition for Review)

DAVID BALUARTE; JASON CADE;
KRISTINA M. CAMPBELL; KATE
EVANS; JOANNE GOTTESMAN;
CESAR CUANCHTEMOC GARCIA
HERNANDEZ; MARY HOLPER;
ELIZABETH KEYES; JENNIFER LEE
KOH; FRANCES KREIMER; EVAN
TSEN LEE; PETER MARKOWITZ; M.
ISABEL MEDINA; HIROSHI
MOTOMURA; CARRIE L.
ROSENBAUM; ERICA B. SCHOMMER;
ANITA SINHA; DOUGLAS SMITH;
ELISSA STEGLICH; MAUREEN A.
SWEENEY; SUSANNAH VOLPE;
ANNA WELCH; AMERICAN
IMMIGRATION LAWYERS
ASSOCIATION; ROCKY MOUNTAIN
IMMIGRANT ADVOCACY NETWORK;
FLORENCE IMMIGRANT & REFUGEE
RIGHTS PROJECT; BROOKLYN
DEFENDER SERVICES; IMMIGRANT
DEFENDERS LAW CENTER; REFUGEE
AND IMMIGRANT CENTER FOR
EDUCATION AND LEGAL SERVICES;

IMMIGRANT LEGAL DEFENSE; THE
CAPITAL AREA IMMIGRANTS
RIGHTS COALITION; NORTHWEST
IMMIGRANT RIGHTS PROJECT;
MARIPOSA LEGAL; IMMIGRATION
SERVICES & LEGAL ADVOCACY;
ALAMEDA PUBLIC DEFENDER;
CAPITAL AREA IMMIGRANTS'
RIGHTS COALITION,

Amici Curiae.

ORDER AND JUDGMENT*

Before **TYMKOVICH**, Chief Judge, **BRISCOE**, and **BACHARACH**, Circuit Judges.

Our ruling in this case, in which Judge Bacharach concurred and dissented, has been vacated by the Supreme Court and the matter remanded for our consideration of the Attorney General's recent decision in *Matter of B-Z-R-*, 28 I&N Dec. 563 (A.G. 2022). The panel majority relied on *Matter of G-G-S-*, 26 I&N Dec. 339 (BIA 2014), which has now been overruled by *Matter of B-Z-R-*. We in turn remand the matter to the Board of Immigration Appeals to reconsider Mr. Birhanu's eligibility for asylum and withholding of removal in light of *Matter of B-Z-R-*, which permits immigration authorities to determine in the first instance the relevance of mental health evidence on a case-by-case basis.

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

As is relevant here, the Board may consider Mr. Birhanu’s mental health in determining whether he, “having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of the United States.” 8 U.S.C. § 1158(b)(2)(A)(ii); *see id.* § 1231(b)(3)(B)(ii).

Remanded for further consideration in light of *Matter of B-Z-R-*.

Entered for the Court

Mary Beck Briscoe
Circuit Judge