

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

August 25, 2016

Lyle W. Cayce
Clerk

No. 16-60294

MAYRA AIDE HOLGUIN-MENDOZA, also known as Mayra Ayde Holguin-Mendoza,

Petitioner

v.

LORETTA LYNCH, U. S. ATTORNEY GENERAL,

Respondent

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

Before DENNIS, HAYNES, and GRAVES, Circuit Judges.

PER CURIAM:

The respondent asks us to dismiss the petition of Mayra Holguin-Mendoza for lack of jurisdiction. Specifically, the respondent asserts that the decision of the Board of Immigration Appeals (BIA) is not a final reviewable order, and, alternatively, that the petition should be dismissed for prudential reasons. We disagree.

This court has not yet decided the issue of the finality of a BIA decision which resolves the merits of an appeal but remands for further proceedings only as to voluntary departure. However, as the respondent acknowledges,

several other circuits have concluded that such a decision is a final order of removal for purposes of judicial review. See *Batubara v. Holder*, 733 F.3d 1040, 1041-42 (10th Cir. 2013); *Almutairi v. Holder*, 722 F.3d 996 (7th Cir. 2013); *Rodas-Leon v. Att’y Gen. of the U.S.*, 475 F. App’x 430, 431 (3d Cir. 2012); *Li v. Holder*, 666 F.3d 147, 148-49 (4th Cir. 2011); *Giraldo v. Holder*, 654 F.3d 609, 614 (6th Cir. 2011); *Pinto v. Holder*, 648 F.3d 976, 986 (9th Cir. 2011); *Alibasic v. Mukasey*, 547 F.3d 78, 82-84 (2d Cir. 2008). Further, in *Hakim v. Holder*, the First Circuit assumed that such a decision was a final order of removal, but declined jurisdiction for prudential reasons. *Hakim*, 611 F.3d 73, 78-79 (1st Cir. 2010). We find these cases to be persuasive authority and likewise conclude that a BIA decision which resolves the merits of an appeal but remands for further proceedings as to voluntary departure is a final order of removal for purposes of judicial review. We further conclude that the question of whether Huguin-Mendoza has a colorable due process claim is sufficient to allow her petition for review to go forward.

IT IS ORDERED that respondent’s opposed motion to dismiss the petition for review for lack of jurisdiction is DENIED.