

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

File Name: 11a0779n.06

No. 09-4030

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT



GOPINATH SWAMYNATHAN, )  
 )  
 Petitioner, )  
 )  
 v. )  
 )  
 ERIC H. HOLDER, Jr., ATTORNEY )  
 GENERAL, )  
 )  
 Respondent. )  
 )  
 )

PETITION FOR REVIEW OF THE  
DECISION OF THE BOARD OF  
IMMIGRATION APPEALS

O P I N I O N

BEFORE: WHITE and STRANCH, Circuit Judges; and COHN, District Judge.\*

PER CURIAM. This is an immigration case. Petitioner Gopinath Swamynathan (“Petitioner”) petitions for review of a decision of the Board of Immigration Appeals (“BIA”) which affirmed the denial of his application for relief from removal but remanded his case to the immigration judge (“IJ”) solely to reconsider the denial of his application for voluntary departure. Attorney General Eric H. Holder, Jr. (“Respondent”) moved to dismiss the petition for lack of jurisdiction, arguing that the BIA’s order was not final due to the remand. A panel of this court denied Respondent’s motion, and directed the parties to address the issue of jurisdiction in their briefs.

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\*The Honorable Avern Cohn, United States District Judge for the Eastern District of Michigan, sitting by designation.

No. 09-4030

*Swamynathan v. Holder*

During the pendency of this appeal, another panel of this court issued a published decision deciding the same jurisdictional issue presented in this appeal. In *Giraldo v. Holder*, 654 F.3d 609 (6th Cir. 2011), the panel, while concluding that it had jurisdiction to review the BIA's order, declined to exercise jurisdiction for prudential reasons. In light of *Giraldo*, the petition for review of the BIA's order denying withholding of removal is DISMISSED WITHOUT PREJUDICE. As explained in *Giraldo*, if Petitioner is granted voluntary departure, he may then decide whether to comply with the relevant departure provisions under 8 U.S.C. § 1229c(b), or file another petition for judicial review of his application for withholding of removal.