

No. 12-3103

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT



JULIUS KIMANI NGANGA,)
)
 Petitioner,)
)
 v.)
)
 ERIC H. HOLDER, JR., Attorney General,)
)
 Respondent.)

O R D E R

BEFORE: MARTIN and CLAY, Circuit Judges; HOOD, District Judge.*

PER CURIAM. Julius Kimani Nganga, who is a native and citizen of Kenya, petitions for review of an order by the Board of Immigration Appeals (BIA). The BIA denied reconsideration of a prior order. That order denied reopening of an immigration judge’s decision that previous denied Nganga’s applications for relief from removal. Nganga moves to stay his removal pending a decision on the merits of his appeal. The Attorney General opposes the motion.

“The party requesting a stay bears the burden of showing that the circumstances justify an exercise of that discretion.” *Nken v. Holder*, 556 U.S. 418, 433–34 (2009). We consider four factors to determine whether a stay is appropriate: (1) whether the petitioner “has made a strong showing that he is likely to succeed on the merits”; (2) whether the petitioner “will be irreparably injured absent a stay”; (3) “whether issuance of a stay will substantially injure other” interested parties; and (4) “where the public interest lies.” *Id.* at 434 (internal quotation marks and citation omitted).

* The Honorable Joseph M. Hood, United States Senior District Judge for the Eastern District of Kentucky, sitting by designation.

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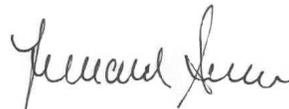
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Nganga argues that the BIA failed to consider all of the legal and material facts in his case, and its summary omission of these facts has resulted in the arbitrary denial of reconsideration. The BIA however, provided several reasons for denying reconsideration, and those reasons are supported by citations to both the administrative record and its precedent. Given the broad discretion afforded the BIA to deny reconsideration, *see Alizoti v. Gonzales*, 477 F.3d 448, 451 (6th Cir. 2007), we cannot conclude at the present time that Nganga has a likelihood of success on appeal.

The final two “factors merge when the Government is the opposing party.” *Nken*, 556 U.S. at 435. “There is always a public interest in prompt execution of removal orders.” *Id.* at 436. There is no dispute that Nganga previously received a stay or that he complied with his supervision order. However, Nganga has been in the United States illegally for over ten years and he continues to challenge his removal on grounds that were previously rejected.

The motion to stay removal is **denied**.

ENTERED BY ORDER OF THE COURT



Clerk