Matter of CORONADO ACEVEDO, Respondent

Decided by Attorney General November 17, 2022

U.S. Department of Justice
Office of the Attorney General

(1) *Matter of S-O-G- & F-D-B-*, 27 I&N Dec. 462 (A.G. 2018), is overruled.

(2) Pending the outcome of the rulemaking process, immigration judges and the Board of Immigration of Appeals may consider and, where appropriate, grant termination or dismissal of removal proceedings in certain types of limited circumstances, such as where a noncitizen has obtained lawful permanent residence after being placed in removal proceedings, where the pendency of removal proceedings causes adverse immigration consequences for a respondent who must travel abroad to obtain a visa, or where termination is necessary for the respondent to be eligible to seek immigration relief before United States Citizenship and Immigration Services.

BEFORE THE ATTORNEY GENERAL

Pursuant to 8 C.F.R. § 1003.1(h)(1)(i), I direct the Board of Immigration Appeals ("Board") to refer this case to me for my review. With the case thus referred, I hereby vacate the Board's decision in this matter, overrule *Matter of S-O-G- & F-D-B-*, 27 I&N Dec. 462 (A.G. 2018), which formed the basis for the Board's decision, and remand to the Board for further proceedings consistent with this opinion.

S-O-G- & F-D-B- involved the authority of immigration judges to end removal proceedings, which is referred to as "terminating" or "dismissing" a removal proceeding.[1] Certain regulations expressly authorize termination or dismissal in specified circumstances. *See, e.g.*, 8 C.F.R. §§ 1216.4(a)(6), 1238.1(e), 1239.2(c), 1239.2(f). In addition, under Board precedent, cases may be terminated where the immigration judge determines the removability charges cannot be sustained. *See S-O-G- & F-D-B-*, 27 I&N Dec. at 465−66.

Before *S-O-G- & F-D-B-*, immigration judges and the Board found termination appropriate in other, narrow circumstances as well. For instance, adjudicators terminated proceedings where, following the commencement of proceedings, the respondent was granted lawful permanent residence or other

[1] In *S-O-G- & F-D-B-*, Attorney General Sessions noted that the concepts of "dismissal" and "termination" are "similar," but explained that the labeling distinction can be relevant when a movant seeks to invoke a specific regulatory provision that authorizes "dismissal" as opposed to "termination." 27 I&N Dec. at 467. This labeling distinction is not material when a movant asks an immigration judge or the Board to end a case pursuant to a provision that does not use one of those labels. Except where a distinction between the two terms exists in regulations, this opinion refers to "termination" and "dismissal" interchangeably.

immigration status by United States Citizenship and Immigration Services ("USCIS"). Adjudicators also terminated proceedings where the respondent needed to travel abroad to obtain a visa but could not do so while removal proceedings were pending without risking serious adverse immigration consequences. *See, e.g.*, *Garcia-DeLeon v. Garland*, 999 F.3d 986, 992 (6th Cir. 2021). And adjudicators found termination appropriate in certain cases where a respondent wished to seek immigration relief, such as adjustment to lawful permanent status, before USCIS. *See, e.g.*, 8 C.F.R. § 1245.2(a)(1)(ii) (stating that, subject to exceptions, USCIS, and not an immigration judge, has jurisdiction to adjudicate an application for adjustment of status filed by an arriving alien); 6 USCIS Policy Manual pt. J, ch. 4 n.2 ("If a [noncitizen with special immigrant juvenile classification] is in removal proceedings, the immigration court must terminate the proceedings before USCIS can adjudicate the adjustment application.").

In *S-O-G- & F-D-B-*, Attorney General Sessions held that "immigration judges have no inherent authority to terminate or dismiss removal proceedings." 27 I&N Dec. at 463. That conclusion relied heavily upon Attorney General Sessions's prior opinion in *Matter of Castro-Tum*, which concerned the practice of administrative closure, "a docket management tool that is used to *temporarily* pause removal proceedings," *Matter of W-Y-U-*, 27 I&N Dec. 17, 18 (BIA 2017) (emphasis added), and "remove a case from an Immigration Judge's active calendar or from the Board's docket," *Matter of Avetisyan*, 25 I&N Dec. 688, 692 (BIA 2012). In *Castro-Tum*, Attorney General Sessions determined that immigration judges and the Board have no general authority to administratively close cases. 27 I&N Dec. 271, 282−83 (A.G. 2018). *Castro-Tum* reasoned that 8 C.F.R. § 1240.1(a)(1)(iv), which authorizes immigration judges to "take any other action consistent with applicable law and regulations as may be appropriate," does not grant "authority to make procedural rulings within the proceeding, such as the granting of administrative closure." 27 I&N Dec. at 285. Relying on that holding, *S-O-G- & F-D-B-* explained that, "[g]iven that the provision does not permit the immigration judge to suspend indefinitely a respondent's removal proceedings," it "similarly cannot be read to provide the authority to end removal proceedings entirely." 27 I&N Dec. at 466 (citing *Castro-Tum*, 27 I&N Dec. at 285).[2] Accordingly, the Attorney General held that immigration judges may not order termination or dismissal except in the "specific and circumscribed" circumstances expressly authorized by

[2] *Castro-Tum* also concluded that administrative closure was not authorized by 8 C.F.R. §§ 1003.1(d)(1)(ii) and 1003.10(b). 27 I&N Dec. at 284−85. *S-O-G- & F-D-B-* did not discuss those provisions. *But see Gonzalez v. Garland*, 16 F.4th 131, 140−42 (4th Cir. 2021) (concluding that the plain language of these provisions authorizes termination).

regulation or where the Department of Homeland Security ("DHS") cannot sustain the removability charges. *Id.* at 468.[3]

In this case, DHS initiated removal proceedings against respondent, a citizen of Mexico, by filing a Notice to Appear charging her with deportability under section 237(a)(1)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1227(a)(1)(B) (present in violation of immigration law). While respondent's case was pending before the immigration court, her husband, a U.S. citizen, filed on her behalf a petition for an immediate relative immigrant visa with USCIS. *See Matter of Coronado Acevedo*, Oral Decision of the Immigration Judge at *2 (Immig. Ct. Apr. 15, 2019). Respondent requested a continuance to allow USCIS to adjudicate the visa petition, which the immigration judge denied. *Id.* at *3−4. The immigration judge then denied respondent's application for cancellation of removal. *Id.* at *4−6.

While respondent's appeal was pending before the Board, USCIS granted the immigrant visa petition the respondent's husband had filed on her behalf. DHS then filed a motion, with respondent's concurrence, to dismiss the removal proceedings without prejudice. DHS stated that respondent "has an approved visa petition and an immigrant visa immediately available to her," "has no criminal convictions that would render her inadmissible," and "appears at least facially eligible for adjustment of status . . . at this time." DHS Motion to Dismiss Without Prejudice at 1 (Apr. 3, 2021). DHS thus asked the Board to dismiss the removal proceedings "to allow [respondent] to apply for adjustment of status" before USCIS. *Id.* The Board denied DHS's motion to dismiss, concluding that *S-O-G- & F-D-B-* precluded the Board from terminating or dismissing removal proceedings in respondent's case. *See Matter of Coronado Acevedo*, slip op. at *1 (BIA Mar. 17, 2022). The Board also dismissed respondent's appeal of the denial of cancellation of removal. *Id.* at *3.[4]

I have now determined that *S-O-G- & F-D-B-* should be overruled. Last year, I overruled *Castro-Tum*, explaining that three of the four courts of appeals to consider the decision had rejected it—while even the fourth ruled that administrative closure was authorized in some circumstances—and that the Department was engaged in reconsideration of the relevant regulations through notice-and-comment rulemaking. *Matter of Cruz-Valdez*, 28 I&N

[3] Although *S-O-G- & F-D-B-* directly addressed the authority of immigration judges, the Board has interpreted it to govern the Board's authority as well.

[4] On May 25, 2022, DHS and respondent filed a joint motion to reopen and dismiss proceedings pursuant to 8 C.F.R. §§ 1003.2(c)(3)(iii) and 1239.2(c). That motion remains pending before the Board. Respondent has also filed a petition for review of the Board's decision. Petition for Review, *Coronado-Acevedo v. Garland*, No. 22-623 (9th Cir. Apr. 1, 2022).

Dec. 326, 328–29 (A.G. 2021). *Castro-Tum* served as a central pillar of Attorney General Sessions's reasoning in *S-O-G- & F-D-B-*. The latter opinion described its holding as "consistent with . . . *Castro-Tum*" and its analysis flowed *a fortiori* from that decision. 27 I&N Dec. at 463, 466. Perhaps for that reason, the Attorney General decided *S-O-G- & F-D-B-* without briefing only four months after *Castro-Tum*.

The only court of appeals to directly review *S-O-G- & F-D-B-* has rejected that decision for the same reason it previously rejected *Castro-Tum*. In *Gonzalez v. Garland*, 16 F.4th 131 (4th Cir. 2021), the Fourth Circuit explained that *S-O-G- & F-D-B-* conflicted with "the very same regulations" it interpreted in its decision vacating *Castro-Tum*. *Id.* at 140–42 (citing *Romero v. Barr*, 937 F.3d 282 (4th Cir. 2019)). Because *S-O-G- & F-D-B-* "relie[d] heavily on *Castro-Tum*," the court concluded, "the fact that *Castro-Tum* has been overruled should not only begin the analysis [of *S-O-G- & F-D-B-*], but . . . should definitively end it." *Id.* at 142. And two other circuits have rejected *Castro-Tum* on grounds that would apply with similar force to *S-O-G- & F-D-B-*. *See Meza Morales v. Barr*, 973 F.3d 656, 665–67 (7th Cir. 2020); *Arcos Sanchez v. Att'y Gen. U.S. of Am.*, 997 F.3d 113, 121–23 (3d Cir. 2021).[5]

The Department is currently reconsidering the regulations at issue in both *Castro-Tum* and *S-O-G- & F-D-B-* and expects to issue a notice of proposed rulemaking that would address the authority of immigration judges and the Board to terminate removal proceedings. That rulemaking process will "'afford[] all interested parties a full and fair opportunity to participate and ensure[] that the relevant facts and analysis are collected and evaluated.'" *Cruz-Valdez*, 28 I&N Dec. at 329 (alterations in original) (quoting *Matter of Compean*, 25 I&N Dec. 1, 2 (A.G. 2009)).

While that rulemaking process proceeds, I have determined that *S-O-G- & F-D-B-* should be overruled in its entirety. The precedential basis for that opinion has been significantly eroded by the overruling of *Castro-Tum*. Moreover, *S-O-G- & F-D-B-* has imposed "rigid procedural requirements that would undermine . . . fair and efficient adjudication" in certain immigration cases. *Matter of A-C-A-A-*, 28 I&N Dec. 351, 351 (A.G. 2021). That decision can be read to preclude termination in some situations where adjudicators previously have terminated cases—such as where a noncitizen has obtained lawful permanent residence after being placed in removal proceedings; where the pendency of removal proceedings causes adverse immigration consequences for a respondent who must travel abroad to obtain a visa; or where, as here, termination is necessary for the respondent

[5] In dicta in an unpublished decision, a panel of the Sixth Circuit signaled agreement with *S-O-G- & F-D-B-*. *See Arangure v. Garland*, No. 19-4025, 2022 WL 539224, at *3 & n.3 (6th Cir. Feb. 23, 2022).

to be eligible to seek immigration relief before USCIS. Pending the outcome of the rulemaking process, immigration judges and the Board should be permitted to consider and, where appropriate, grant termination in these types of limited circumstances.

Accordingly, I overrule *S-O-G- & F-D-B-*, 27 I&N Dec. 462, vacate the Board's March 17, 2022, decision in this matter, and remand to the Board for further proceedings consistent with this opinion.