FILED
United States Court of Appeals
Tenth Circuit

April 25, 2023

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

FIDEL URIBE OSORIO,

Petitioner,

v.

MERRICK B. GARLAND,
United States Attorney General,

Respondent.

No. 22-9559
(Petition for Review)

ORDER AND JUDGMENT*

Before **TYMKOVICH**, **BALDOCK**, and **McHUGH**, Circuit Judges.

Fidel Uribe Osorio is a native and citizen of Mexico who has lived in the United States without authorization since 1998. In 2017, the government charged him with removability as an alien present in the United States without being admitted or paroled. Uribe did not contest that charge, but requested cancellation of removal, *see* 8 U.S.C. § 1229b(b)(1).

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* After examining the briefs and appellate record, this panel has determined unanimously to honor the parties' request for a decision on the briefs without oral argument. *See* Fed. R. App. P. 34(f); 10th Cir. R. 34.1(G). The case is therefore submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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.

Of the various prerequisites for cancellation of removal, the only dispute was whether Uribe had "establishe[d] that removal would result in exceptional and extremely unusual hardship to [his] spouse, parent, or child, who is a citizen of the United States or an alien lawfully admitted for permanent residence." *Id.* § 1229b(b)(1)(D). Uribe argued his U.S.-citizen children would suffer such hardship. After a hearing, an immigration judge (IJ) concluded the hardship to his children would not be exceptional and extremely unusual. Uribe appealed to the Board of Immigration Appeals (BIA), which affirmed through a single-member, summary order. Uribe then timely filed this petition for review.

Uribe argues this court should review the agency's hardship decision de novo. He acknowledges, however, that we would first need to overrule some of our previous decisions interpreting the scope of our jurisdiction. The Immigration and Nationality Act withholds jurisdiction to review "any judgment regarding the granting of relief under section . . . 1229b." 8 U.S.C. § 1252(a)(2)(B)(i). Twenty years ago, we held this provision prevents us from reviewing the agency's determination that an applicant for cancellation of removal has not met the hardship standard. *Morales Ventura v. Ashcroft*, 348 F.3d 1259, 1261–62 (10th Cir. 2003). And three years ago, we reaffirmed this holding over the argument that an intervening Supreme Court decision had undermined it. *Galeano-Romero v. Barr*, 968 F.3d 1176, 1181–84 (10th Cir. 2020).

Uribe recognizes that this panel may not overrule a prior panel decision. *See, e.g.*, *Thompson v. Weyerhaeuser Co.*, 582 F.3d 1125, 1130 (10th Cir. 2009). He

therefore explicitly frames his appellate brief as a means to preserve his claim—presumably in anticipation of a petition for rehearing en banc, or for certiorari—that *Galeano-Romero* and similar decisions were wrongly decided and that the court has authority to review the agency's hardship determination de novo.

We need not describe his arguments in this regard because they do not matter at this phase. We accept his concession that the court, at present, does not have jurisdiction over the dispositive issue, and we dismiss his petition for review on that basis.

Entered for the Court

Bobby R. Baldock
Circuit Judge