Juludang v. Holder: Another win for Immigrant Rights

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Immigration law is constantly changing. So even while Congress has not budged on Immigration Reform, the law has slowly advanced on other fronts in recent years. President Obama, for instance, recently announced several changes to deportation policy and consular processing. But another change came recently from the US Supreme Court in its unanimous decision in *Judulang v. Holder*. There the Court showed that it will look hard at the federal agencies that shape immigration laws.

The Court sharply criticized the Board of Immigration Appeals (BIA), an administrative appellate court within the Department of Justice. The BIA issues published decisions interpreting immigration law. But in doing so, Justice Elena Kagan wrote, the BIA must provide a "reasoned explanation" of its decisions. And in *Judulang*, it "flunked that test."

The case involved Joel Judulang, a native of the Philippines who entered the United States as a child and a lawful permanent resident in 1974. In 1988, he pled guilty to voluntary manslaughter after a fight in which a friend killed another individual. He was sentenced to probation. But when he came to the government's attention again in 2005 it charged that he was deportable for being an aggravated felon who committed a "crime of violence."

In his defense, Mr. Judulang applied for a waiver called 212(c), which allows certain permanent residents who have been convicted of a crime to remain in the United States. But the Immigration Judge and the BIA denied his application. At the time, published BIA case law did not permit 212(c) waivers for applicants who had committed "crime[s] of violence." To reach that interpretation, the BIA looked to history: 212(c) waivers existed long before a "crime of violence" ever became a ground of deportability. Only *older* ground of removal could be waived under 212(c).

But that reasoning did not persuade the Supreme Court. The BIA, it wrote, has the power to interpret laws and dramatically limit the rights of non-citizens. At a minimum, it must do that rationally. In this case, it concluded that the BIA's rule "has nothing to do with whether [an applicant] merits the ability to seek a waiver." Instead, it works more like a coin toss: some applicants will qualify while others will not.

Ultimately the Supreme Court ruled that Mr. Judulang is free to seek a 212(c) waiver regardless of the BIA's interpretation of the history of immigration laws. But there are doubtless many others who, like Mr. Judulang, had their applications denied under the BIA's rule.

The case follows on the heels of the Supreme Court's 2010 decision in *Padilla v. Kentucky*, where it ruled that noncitizens have a constitutional right to be informed of the possible immigration consequences of criminal convictions. Like *Padilla*, *Judulang* focuses on the frequent and complex interaction between criminal and immigration law. And like *Padilla, Judulang* strengthens noncitizens' rights and increases the federal courts' oversight over that interaction.

For more information about Judulang v. Holder, or any of the other changes in Immigration law, or for any other immigration matter, please contact Grzeca Law Group at (414) 342-3000 or visit our website at www.grzecalaw.com.