



JOEL JUDULANG

WASHINGTON — The U.S. Supreme Court Monday temporarily stopped the deportation of a Filipino man because federal officials won't let him apply for an exception to the deportation rules while offering relief to others.

The Hight Court, in Judulang v. Holder case, unanimously ruled in favor of Joel Judulang, a lawful permanent resident since 1974 and who was convicted after pleading guilty to voluntary manslaughter in California in 1989, and then was arrested for theft.

He was seeking relief under the former Immigration and Nationality Act 212, but the government began deportation proceedings and refused to let Judulang apply for an exception.

The Supreme Court slammed the BIA for arbitrarily “deciding when resident aliens may apply to the attorney general for relief from deportation under a now-repealed provision of the immigration laws.”

Under the Immigration and Nationality Act 212 repealed in 1996, the attorney general had the discretion “to admit certain excludable aliens.”

“The attorney general could order this relief when the alien had lawfully resided in the United States for at least seven years before temporarily leaving the country, unless the alien was excludable on one of two specified grounds,” according to the opinion authored by Justice Elena Kagan.

She added that the provision “did not apply when the alien was being deported.”

But Congress replaced that rule with one known as “cancellation of removal,” which Kagan noted “is available in a narrow range of circumstances to excludable and deportable aliens alike.”

This provision is straightforward when the BIA is deciding whether to block an alien from entering the U.S., but its application “becomes a tricky business” in deportation matters, according to the court.

According to Courthouse News (CN), one approach that the board uses to reach a decision is

known as the “comparable grounds” rule, and its results are less than ideal.

While this approach would afford deportation relief to an alien with a cocaine conviction, an alien convicted of sexually abusing a minor would not have the same opportunity.

That is because the cocaine conviction closely matches an exclusion named in the statute, but no statutory ground of exclusion covers the charge of sexually abusing a minor.

Judulang, 45, of Los Angeles, ran into this problem when he faced deportation proceedings in 2005 after being convicted of theft.

The conviction was Judulang's second.

In 1989, after 15 years in the U.S., the Philippine-born man was convicted of voluntary manslaughter when he got involved in a fight where a person was shot and killed.

Homeland Security defined that manslaughter conviction as a “crime of violence,” and Judulang was not eligible for deportation relief because the charge is not comparable to any exclusion ground, according to CN.

The Supreme Court took up Judulang's case in April 2011, four years after the 9th Circuit affirmed a BIA decision that he did not receive derivative U.S. citizenship through his naturalized parents.

“But courts retain a role, and an important one, in ensuring that agencies have engaged in reasoned decisionmaking,” Kagan wrote.

“The BIA has flunked that test here,” she added.

“By hinging a deportable alien’s eligibility for discretionary relief on the chance correspondence between statutory categories — a matter irrelevant to the alien’s fitness to reside in this country — the BIA has failed to exercise its discretion in a reasoned manner.”

“The comparable-grounds approach does not rest on any factors relevant to whether an alien (or any group of aliens) should be deported. It instead distinguishes among aliens — decides who should be eligible for discretionary relief and who should not — solely by comparing the metes and bounds of diverse statutory categories into which an alien falls,” the decision states later.

“The resulting Venn diagrams have no connection to the goals of the deportation processor the rational operation of the immigration laws.”

“The BIA’s comparable-grounds rule is unmoored from the purposes and concerns of the immigration laws,” Kagan concluded.

“It allows an irrelevant comparison between statutory provisions to govern a matter of the utmost importance — whether lawful resident aliens with longstanding ties to this country may stay here. And contrary to the government’s protestations, it is not supported by text or practice or cost considerations. The BIA’s approach therefore cannot pass muster under ordinary principles of administrative law.”

Judulang’s case was sent back to the 9th U.S. Circuit Court of Appeals for rehearing.

Judulang, who is currently out on bail, will get another chance to fight deportation.