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Legal Sidebar

No Judicial Review of Fact Findings for Certain Discretionary Immigration Relief, Rules Supreme Court

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On May 16, 2022, the Supreme Court decided *Patel v. Garland*, a case concerning the scope of an Immigration and Nationality Act (INA) provision barring judicial review of decisions denying certain forms of discretionary immigration relief. Specifically, this case asked whether 8 U.S.C. § 1252(a)(2)(B)(i) (Subsection (B)(i)) precludes review by the federal courts of a nondiscretionary, factual determination that an alien is ineligible for discretionary relief from removal. In *Patel v. Garland*, the Supreme Court held that applicants may not seek judicial review of *any judgment relating* to the granting of discretionary relief from removal, including underlying factual findings.

Immigration and Nationality Act

The Immigration and Nationality Act governs the admission, removal, and presence of non-U.S. nationals (*aliens*, as the term is used in the INA) in the United States. An alien found to be inadmissible under 8 U.S.C. § 1182 or deportable under 8 U.S.C. § 1227 may be ordered removed. For instance, Section 1182(a)(6)(A)(i) provides for the removal of aliens who are present in the United States without admission or parole. Immigration judges (IJs) within the Department of Justice (DOJ) conduct removal proceedings and may order removal. An alien may appeal an IJ's decision to the Board of Immigration Appeals (BIA), an administrative appellate body within DOJ. In most situations, a BIA decision can be appealed to a federal court of appeals.

Congress has authorized relief from removal in certain situations. As relevant to this case, 8 U.S.C. § 1255(i) gives the Attorney General discretion to adjust the status of an eligible individual in certain specified circumstances, including those who have filed a labor certification under Section 1182(a)(5)(A). To be eligible for relief, the applicant must satisfy certain threshold requirements specified in statute, including that the applicant is not inadmissible.

In the event of an unfavorable decision, review by a court is limited pursuant to 8 U.S.C. § 1252. Specifically, Section 1252(a)(2)(B)(i) bars judicial review of "any judgment regarding the granting of relief" specified in five INA provisions that authorize discretionary relief, including adjustment of status

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under Section 1255. Notwithstanding that provision, Section 1252(a)(2)(D) allows for "review of constitutional claims or questions of law" raised in a petition for review of a final removal order filed with "an appropriate court of appeals in accordance with this section."

Patel v. Garland

Factual Background

Pankajkumar Patel, an Indian national, entered the United States unlawfully in 1992. In 2007, after an immigrant visa became immediately available to him, he applied for adjustment of status under Section 1255(i) based on a timely filed application for a labor certification. In December 2008, while his application was pending, he renewed his Georgia driver's license. Patel indicated on the application that he was a U.S. citizen and was issued a new license. Patel's application for adjustment of status was denied based on the United States Citizenship and Immigration Services' (USCIS's) finding that he falsely represented U.S. citizenship on his driver's license application, and was thus inadmissible under 8 U.S.C. § 1182(a)(6)(C)(ii).

The Department of Homeland Security (DHS) commenced removal proceedings against Patel for being present in the United States without admission or parole, in violation of Section 1182(6)(A)(i). During a hearing before an IJ, Patel offered purportedly inconsistent testimony about his false claim of citizenship, insisting that checking the box on the driver's license application declaring U.S. citizenship was a mistake. The IJ did not find his testimony credible, and denied his application for adjustment of status and ordered removal from the United States. The IJ concluded Patel failed to satisfy his burden to show he was not inadmissible under Section 1182(a)(6)(C)(ii) for falsely representing himself as a U.S. citizen. The BIA affirmed the IJ's decision.

Patel appealed the BIA decision to the U.S. Court of Appeals for the Eleventh Circuit (Eleventh Circuit), arguing that any reasonable judge would have found his testimony credible and that he had made an honest mistake on the form. An Eleventh Circuit panel concluded it lacked jurisdiction under Section 1252(a)(2)(B) and (D) to review Patel's challenge to the IJ's underlying factual findings. Upon rehearing en banc, the Eleventh Circuit also held it lacked jurisdiction to review Patel's factual challenge to the denial of adjustment. The court concluded that all factual determinations made as part of an application for discretionary relief fell within the meaning of "judgment" and were thus covered by Section 1252(a)(2)(B)(i)'s prohibition on judicial review.

Arguments Presented by the Parties

On appeal to the Supreme Court, the government argued that the petitioner could seek judicial review of his challenge to the agency's factual findings. The government maintained that Subsection (B)(i) bars only review of discretionary determinations by the Attorney General, and does not preclude review of nondiscretionary determinations, that is, determinations of law and fact. Patel advanced a somewhat similar interpretation, arguing that Subsection (B)(i)'s statutory bar does not preclude judicial review of nondiscretionary eligibility decisions. Patel contended that review of the initial statutory eligibility determination, specifically whether he is inadmissible under Section 1182 for falsely representing himself to be a U.S. citizen, would be consistent with a two-step approach, under which the Attorney General determines first whether an individual is eligible for adjustment of status, and second whether to grant an adjustment request "in his discretion." Because the government supported Patel's position that Section (B)(i) does not bar review of nondiscretionary determinations, the Court appointed an amicus to argue in support of the Eleventh Circuit's judgment. The amicus argued that Subsection (B)(i)'s phrase "any judgment regarding the granting of relief under §1255" precludes review of *any* decision relating to the granting or denying of relief, including factual findings for an eligibility determination.

The Court's Decision

The Supreme Court affirmed the Eleventh Circuit's decision. In a 5-4 opinion authored by Justice Barrett and joined by Chief Justice Roberts and Justices Thomas, Alito, and Kavanaugh, the Court ruled that Section 1252(a)(2)(B)(i) entirely bars judicial review of the Attorney General's decisions denying discretionary relief from removal, including judicial review of initial eligibility determinations such as factual findings that underlie a denial of relief. The Court based its conclusion on the text and context of Subsection (B)(i), and emphasized that the provision prohibits review of *any* judgment *relating* to the granting of relief under Section 1255. The Court explained that "'any' means that the provision applies to judgments 'of whatever kind' under [Section 1255], not just discretionary judgments or the last-in-time judgment." The Court thus concluded that Section 1252(a)(2)(B)(i)'s scope consists of any judgment *relating* to the granting of relief, which "plainly includes factual findings." The Court also noted that Section 1252(a)(2)(D) further supports this conclusion because it specifically preserves review of constitutional claims and questions of law. This leaves out, according to the Court, a "major remaining category" of questions of fact. Thus, Subsection (B)(i) bars judicial review of Patel's factual challenge to the denial, leaving Patel without a judicial forum to appeal the BIA's decision.

Justice Gorsuch authored a dissent joined by Justices Breyer, Sotomayor, and Kagan. He cautioned that the majority's ruling would have "dire consequences" by removing the availability of judicial review even when a BIA decision holding an individual to be ineligible to relief is based on a "glaring factual error," thus "promis[ing] that countless future immigrants will be left with no avenue to correct even more egregious agency errors." Justice Gorsuch agreed with Patel that the statutory bar does not preclude judicial review of initial nondiscretionary eligibility decisions. He would have allowed Patel to seek review in federal court under another provision in Section 1252, specifically Subsection (b)(9), which grants federal courts of appeals the power to review "all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien from the United States." He further noted that Subsection (b)(4)(B) grants a federal court authority to reject the agency's factual findings underlying an order of removal if "no 'reasonable adjudicator' could adopt them."

Considerations for Congress

Patel v. Garland clarifies that, when seeking certain discretionary forms of relief—Section 1255(i) in this particular case—petitioners are unable to seek review of factual findings underlying eligibility determinations conducted at the agency level due to Section 1252(a)(2)(B)(i)'s judicial review bar. This decision will restrict review of discretionary forms of relief beyond Section 1255. Section 1252(a)(2)(B)(i)'s judicial review bar applies to other specified forms of relief: Section 1182(h) (granting discretion to waive certain criminal grounds of inadmissibility); Section 1182(i) (granting discretion to waive a provision that makes an alien inadmissible due to fraud or willful misrepresentation of material fact "in the case of an immigrant who is the spouse, son, or daughter of a United States citizen or of an alien lawfully admitted for permanent residence if . . . the refusal of admission to the United States . . . would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien" or, in the case of a self-petitioner under the Violence Against Women Act, "extreme hardship" to certain family members); Section 1229b (allowing for cancellation of removal); and Section 1229c (allowing for voluntary self-departure in lieu of or at the conclusion of removal proceedings for certain individuals). Future petitioners for relief from removal under these provisions will be without a judicial forum to seek the correction of certain factual errors. That said, petitioners *can* seek judicial review of a final order of removal under Section 1252(a)(2)(D) where the petitioner raises colorable questions of law or constitutional claims.

Congress could amend the INA to clarify when judicial review is available for nondiscretionary threshold eligibility determinations, including factual findings, for certain forms of immigration relief. If Congress would like to allow for review of statutory eligibility determinations, including factual findings that may underlie eligibility, it could amend the INA to clarify the scope of Subsection (B)(i). For instance, Congress could amend Section 1252(a)(2)(D) to allow review of questions of fact by "an appropriate court of appeals in accordance with this section," in addition to constitutional claims or questions of law. Congress could also amend Subsection (B)(i) to address the scope of the language "any judgment regarding the granting of relief under . . . Section 1255." Alternatively, Congress may seek to further limit judicial review of discretionary forms of relief. For instance, Congress could amend the INA to preclude judicial review of constitutional claims and questions of law, thereby leaving review by the BIA as the final opportunity to appeal an unfavorable decision.

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