NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 21-1626

STEPHEN IZUCHUKWU ONWUZULIKE,
Petitioner

v.

ATTORNEY GENERAL UNITED STATES OF AMERICA,
Respondent

On Petition for Review of an Order of the
Board of Immigration Appeals
(Agency No. A214-967-318)
Immigration Judge: Jason L. Pope

Submitted Pursuant to Third Circuit LAR 34.1(a)
December 15, 2021
Before: GREENAWAY, JR., PORTER and NYGAARD, Circuit Judges

(Opinion filed: February 10, 2022)

OPINION*

PER CURIAM

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* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

No application for voluntary departure was forthcoming. Rather, Onwuzulike filed a motion to terminate his removal proceedings, claiming lack of jurisdiction and various acts of unprofessionalism and wrongdoing by the immigration court. The IJ heard the motion on October 6 and adjourned for a final hearing on October 27. The IJ denied the motion to terminate in a written decision on October 8, and, having no good cause to continue the case further, entered an order of removal after a hearing on October 27.

Onwuzulike timely appealed. The BIA agreed with the IJ's rulings, adopted the IJ's October 27 and October 8 decisions, and dismissed the appeal. It rejected Onwuzulike's allegations of improper conduct, constitutional violations, and lack of jurisdiction. In particular, the BIA affirmed the IJ's denial of termination and a continuance, reiterating that there was no basis for granting either when the USCIS determined that the I-130 petition had been abandoned, and no valid appeal was filed from that denial. Onwuzulike filed a timely petition for review in this Court.

We have jurisdiction to review the final order of removal under 8 U.S.C. § 1252(a)(1).[2] We consider the agency's legal determinations de novo, including its application of law to facts. See Herrera-Reyes v. Att'y Gen., 952 F.3d 101, 106 (3d Cir. 2020). In this case, we review the BIA's opinion, as it is the "final order," but we will

[2] To the extent that Onwuzulike seeks review of the denial of his wife's I-130 petition, we lack jurisdiction. See Ruiz v. Mukasey, 552 F.3d 269, 273–74 & nn.2 & 3 (2d Cir. 2009); Elbez v. INS, 767 F.2d 1313, 1314 (9th Cir. 1985) (per curiam).

review the IJ's opinion to the extent that the BIA adopted it. See Rodriguez v. Att'y Gen., 844 F.3d 392, 396 n.1 (3d Cir. 2016).

Here, Onwuzulike again claims that agency officials lacked jurisdiction over his case, erred by denying Onwuzulike's motion to terminate removal proceedings and request for a continuance, and engaged in improper conduct, denying him of due process. Nothing in Onwuzulike's filings or the administrative record itself substantiates any of these allegations.

First, as a legal and factual matter, Onwuzulike's claim that the pendency of his wife's I-130 petition on his behalf should have divested the immigration court of jurisdiction is wholly meritless. The BIA correctly explained in its decision that the I-130 petition had been denied as abandoned, see 8 C.F.R. § 103.2(b)(13)(i), in July 2020, and there was no valid, pending appeal from its denial. See A.R. at 2; 8 C.F.R. § 103.2(b)(15) (providing that a denial due to abandonment may not be appealed, but applicant may move to reopen with the USCIS). Moreover, even if there were a valid appeal, that would not divest the agency of jurisdiction over the removal proceedings. See 8 C.F.R. § 1003.14(a) (providing that jurisdiction vests with the immigration court when a charging document is filed); cf. 8 C.F.R. § 1245.2(a)(1)(i) (stating that, when an alien subject to removal applies to adjust status, the immigration judge has exclusive jurisdiction over the application).

may "grant a motion for continuance for good cause shown"); Khan, 448 F.3d at 233. The agency did not abuse its discretion here.

We reject Onwuzulike's unfounded allegations that the DHS and USCIS officials conspired against him, were biased, and ignored the law. A review of the record and the agency's decisions in this matter belie these unsupported allegations and reveal no due process concerns. See Serrano-Alberto v. Att'y Gen., 859 F.3d 208, 223 (3d Cir. 2017).

Finding no error, we will deny the petition for review.[4]

[4] Onwuzulike has attached to his appellate brief here a "Final Judgment of Divorce," issued by the Superior Court of New Jersey, Chancery Division—Family Part, Essex County. See Petitioner's Brief (Dkt. No. 11 at 13). The document is dated June 9, 2021, post-dating the BIA decision in this case. We cannot consider evidence in the first instance. See 8 U.S.C. § 1252(b)(4)(A); Wong v. Att'y Gen., 539 F.3d 225, 234 n.4 (3d Cir. 2008). The document would need to, if not already, be presented first to the USCIS or the agency via the appropriate procedural device, such as a motion to reopen.

File: A214-967-318 – Elizabeth, NJ

Date: MAR 2 8 2021

In re: Stephen Izuchukwu ONWUZULIKE

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Pro se

APPLICATION: Termination; continuance

The respondent, a native and citizen of Nigeria, has appealed from the Immigration Judge's decision dated October 27, 2020. The appeal will be dismissed.

We review the findings of fact, including the determination of credibility, made by the Immigration Judge under the "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues, including issues of law, discretion, or judgment, under a de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii).

We adopt and affirm the Immigration Judge's October 27, 2020, decision, which incorporated by reference the Immigration Judge's October 8, 2020, decision. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994). On appeal, the respondent asserts that the Immigration Judge, the United States Citizenship and Immigration Services ("USCIS") Director, and the Department of Homeland Security attorney conspired, collided, and abused their authority in violation of the respondent's due process rights; the Immigration Judge lacked jurisdiction over these removal proceedings because the USCIS Director's denial of the Form I-130 visa petition filed by his spouse is on appeal; there is systematic racism, human rights abuse, and dishonesty in the Immigration Court; the Immigration Judge was not a neutral adjudicator but was biased and malicious, as well as was negligent and showed ignorance of law in declining to terminate these proceedings; and the denial of the visa petition filed on his behalf was wrongful and is on appeal with the Board (Respondent's Br. at 1-18).

The respondent's arguments do not persuade us of a legal or clear factual error in the Immigration Judge's decisions warranting a reversal, or any improper conduct or a due process violation by the Immigration Judge in denying the respondent's request for termination or further continuance of his proceedings. As noted by the Immigration Judge, the visa petition was considered abandoned and denied for lack of proof of the respondent's divorce prior to his marriage to the petitioner, and the record did not indicate that a valid appeal or a motion was filed from that denial. In any event, the filing of a visa petition on behalf of the respondent (or any appeal from the denial of the visa petition, even if validly filed) does not inmpact the Immigration Court's jurisdiction over removal proceedings.

The respondent also requests that the Board consider documents attached to his appellate brief (Respondent's Br. at 18). Generally, the Board will not accept evidence offered for the first time

APPENDIX C

on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obatgbena*, 19 I&N Dec. 533 (BIA 1988). Many of the documents were already filed before and considered by the Immigration Judge. The additional documents would not warrant a different outcome in the respondent's case. *See Matter of Coelho*, 20 I&N Dec. 464 (BIA 1992).[1]

Regarding the respondent's arguments on his detention status or conditions for release (Respondent's Br. at 19), this issue is not appropriately before the Board, as bond proceedings are separate and apart from removal proceedings. *See* 8 C.F.R. § 1003.19(d); *Matter of R-S-H-*, 23 I&N Dec. 629, 630 n.7 (BIA 2003). Based on the above, the respondent's appeal will be dismissed.

ORDER: The appeal is dismissed.

NOTICE: If a respondent is subject to a final order of removal and willfully fails or refuses to depart from the United States pursuant to the order, to make timely application in good faith for travel or other documents necessary to depart the United States, or to present himself or herself at the time and place required for removal by the Department of Homeland Security, or conspires to or takes any action designed to prevent or hamper the respondent's departure pursuant to the order of removal, the respondent shall be subject to a civil monetary penalty of up to $813 for each day the respondent is in violation. *See* section 274D of the Immigration and Nationality Act, 8 U.S.C. § 1324d; 8 C.F.R. § 280.53(b)(14).

FOR THE BOARD

[1] The respondent argues on appeal, and the documents he submitted show, that his spouse filed an action against the Immigration Judge in the United States District Court for the District of New Jersey (Respondent's Br. at 7). The District Court's docket shows that this case was dismissed on or about January 26, 2021, and that decision was appealed to the United States Court of Appeals for the Third Circuit. *See* 8 C.F.R. § 1003.1(d)(3)(iv)(A)(2) (stating that the Board may take administrative notice of the contents of official documents).