

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

OCT 04 2004

FOR THE NINTH CIRCUIT

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

MOHAMMAD-REZA MIRMEHDI,

Petitioner - Appellant,

v.

IMMIGRATION AND NATURALIZATION
SERVICE,

Respondent - Appellee.

No. 03-56261

D.C. No. CV-02-08916-MLR

MEMORANDUM*

MOSTAFA MIRMEHDI,

Petitioner - Appellant,

v.

IMMIGRATION AND NATURALIZATION
SERVICE,

Respondent - Appellee.

No. 03-56272

D.C. No. CV-02-08918-MLR

MOHSEN MIRMEHDI,

No. 03-56273

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

Petitioner - Appellant,

v.

IMMIGRATION AND NATURALIZATION
SERVICE,

Respondent - Appellee.

D.C. No. CV-02-08919-MLR

MOJTABA MIRMEHDI,

Petitioner - Appellant,

v.

IMMIGRATION AND NATURALIZATION
SERVICE,

Respondent - Appellee.

No. 03-56274

D.C. No. CV-02-08920-MLR

Appeal from the United States District Court
for the Central District of California
Manuel L. Real, District Judge, Presiding

Argued and Submitted May 10, 2004
Pasadena, California

Before: PREGERSON, McKEOWN, and BYBEE, Circuit Judges.

This appeal is brought by Mohammad-Reza Mirmehdi, Mohsen Mirmehdi,
Mostafa Mirmehdi, and Mojtaba Mirmehdi, four brothers from Iran. The issue

before us is whether the district court properly denied the Mirmehdis' 28 U.S.C. § 2254 habeas petitions alleging improper revocation of bond and subsequent detention without bond during the brothers' ongoing removal proceedings.

Separate from the bond proceeding, the Mirmehdis' removal proceedings moved forward on a parallel track. An immigration judge ("IJ") denied the asylum applications of all four brothers and found them ineligible for withholding of removal. Mohammad-Reza Mirmehdi and Mohsen Mirmehdi appealed the denial of asylum to the Board of Immigration Appeals ("BIA"). Mostafa Mirmehdi and Mojtaba Mirmehdi did not appeal their asylum decisions. All four of the brothers appealed the withholding of removal decision. On August 20, 2004, the BIA affirmed the IJ's denial of the asylum claims of Mohammad-Reza Mirmehdi and Mohsen Mirmehdi but granted all of the brothers withholding of removal.

Mostafa Mirmehdi and Mojtaba Mirmehdi

Mostafa Mirmehdi and Mojtaba Mirmehdi did not appeal the denial of their asylum claims. They were ordered removed, although their removal was stayed. They have no right of appeal from that order. Once they were ordered removed, 8 U.S.C. § 1231(a)(2) commands the Attorney General to detain them. Because the Attorney General has an independent, superceding reason for detaining them, their appeals as to revocation of bond are moot.

Mohammad-Reza Mirmehdi and Mohsen Mirmehdi

Mohammad-Reza Mirmehdi and Mohsen Mirmehdi appealed the denial of their asylum claims to the BIA, which in turn affirmed the denial. Because they have now appealed the denial of their asylum claims to this Court, their appeals of the denial of bond revocation are not moot.

The bond revocation was predicated in large part on findings regarding their involvement in terrorist activity. In light of the BIA's findings to the contrary in its April 30, 2002 decision, we are faced with contradictory findings by the BIA. Agencies have a general duty of consistent dealing. When they change direction, whether on matters of law, policy, or fact, they have an obligation to explain themselves. Ordinarily, consistency in factual findings is enforced through our collateral estoppel rules. See United States v. Stauffer Chemical Co., 464 U.S. 165 (1984) (approving mutual defensive collateral estoppel against the government); Shaw's Supermarkets, Inc. v. NLRB, 884 F.2d 34, 41 (1st Cir. 1989) (Breyer, J.) (“[T]he Board remains free to modify or change its rule; to depart from, or to keep within, prior precedent, as long as it focuses upon the issue and explains why change is reasonable”).

Here, the BIA did not invoke either the doctrine of res judicata or collateral estoppel. Rather, the BIA has taken a second look at the facts and come to a

different conclusion. The BIA has not offered a satisfactory explanation for its inconsistent treatment of the Mirmehdis. As to Mohammad-Reza Mirmehdi and Mohsen Mirmehdi, we grant the petition and remand these two cases to the district court for review of the sufficiency of the evidence in light of the BIA's decision finding no evidence connecting the Mirmehdis to terrorist activities.

PETITIONS GRANTED as to Mohammad-Reza Mirmehdi and Mohsen Mirmehdi. The mandate shall issue forthwith.

PETITIONS DISMISSED as moot as to Mojtaba Mirmehdi and Mostafa Mirmehdi.