

Immigration Court: A.G.

Case: *In re Y-L-, In re A-G-, In re R-S-R-*, 23 I&N Dec. 270 (A.G. 2002)

Date: March 5, 2002

Adjudicated by: A.G. Ashcroft

Tags: Immigration, withholding of removal, CAT, drug trafficking, “particularly serious crimes,” aggravated felonies, extenuating circumstances

Questions Presented:

- Are aggravated felonies involving unlawful trafficking in controlled substances presumptively “particularly serious crimes”?
- Are respondents eligible for deferral of removal under CAT?

Holdings:

- Yes, ag fels w/ trafficking = “particularly serious crimes”
 - Only a few extenuating circumstances would provide exceptions
- Respondents are not eligible for deferral of removal under CAT.

Rationale:

- Drug trafficking is INHERENTLY serious criminal activity.
- There’s the possibility of extenuating circumstances—if, at a minimum, ALL of these are true:
 - Very small quantity of controlled substance
 - Very modest amount of money paid for drugs
 - Merely a peripheral involvement in criminal activity, transaction, or conspiracy
 - Absence of any violence or threat of violence
 - No organized crime, terrorism
 - No harm to juveniles
- None of these individuals met the extenuating circumstances bar.
- Also, they don’t get CAT because country conditions have changed (Haiti), the gov’t is not that bad (Jamaica), or testimony is not credible.

Facts: Three foreign nationals with final judgments of conviction for felony drug trafficking. INS started removal proceedings. Petitioned for withholding of removal & CAT protection.

Procedural History:

- **IJs** denied all relief for two of them; one got withholding.
- **BIA** held they were eligible for withholding of removal because of cooperation with federal authorities, limited criminal history, and low-end sentencing within federal guidelines & found probability of torture if returned to home countries.

Appeals to Statute & Precedent:

- **INA § 237(a)(2)(A)(iii), 8 U.S.C. § 1227(a)(2)(A)(iii):** any alien convicted of an aggravated felony is deportable
- **INA § 237(a)(2)(B)(i), 8 U.S.C. § 1227(a)(2)(B)(i):** any alien convicted of a controlled substance offense, other than minimal possession of marijuana for personal use, is deportable.
- **INA § 241(b)(3)(B)(ii):** A.G. does not have to grant (otherwise) mandatory withholding of removal if petitioner has been convicted by a final judgment of a particularly serious crime.
- ***Mahini v. INS*, 779 F.2d 1419 (9th Cir. 1986):** heroin conviction as “particularly serious crime” within INA’s meaning even though only 13m sentence. Trafficking drugs = inherently serious.

Discussion:

- **§ 241(b)(3):** “particularly serious crime” = conviction of aggravated felony/felonies, sentenced to aggregate term of at least 5 years
- When there’s a lesser sentence, the A.G. has discretion to decide what is a “particularly serious crime.”
- BIA has been haphazard in its assessment of “seriousness” of alien defendant crimes, concluding that AEDPA & IIRIRA “reflected Congress’s desire to replace classifications based on the ‘category or type of crime that resulted in the conviction’ with classifications ‘based on the length of sentence imposed.’” (223 I&N Dec. at 273)
- A.G. doesn’t agree: the language of these laws “hardly reflects an intent to subordinate the nefarious or harmful *character* of a crime to mere secondary consideration, let alone remove it from the equation.” (23 I&N Dec. at 274)
- Re. extenuating circumstances: “I emphasize here that such commonplace circumstances as cooperation with law enforcement authorities, limited criminal histories, downward departures at sentencing, and post-arrest (let alone post-conviction) claims of contrition or innocence do not justify such a deviation.” (23 I&N Dec. at 277)