



Eneh v. Holder

601 F.3d 943 (9th Cir. 2010)

Country: United States

Region: Americas

Year: 2010

Court: United States Court of Appeals for the Ninth Circuit

Health Topics: Chronic and noncommunicable diseases, Controlled substances, Health systems and financing, HIV/AIDS, Medicines, Prisons

Human Rights: Freedom from torture and cruel, inhuman or degrading treatment

Facts

The Petitioner, Lawrence Amaechi Eneh, was a native and citizen of Nigeria. He had contracted HIV while working in a nursing home in the United States. He was living with HIV-related illness, Kaposi Sarcoma and Valley Fever, a disease of the lungs, at the time of the proceedings.

The Petitioner was convicted for the sale of marijuana and sentenced to 36 months' imprisonment. The US Department of Homeland Security issued the Petitioner a Notice to Appear and charged him as removable due to his conviction. The Petitioner applied for asylum, withholding of removal, and withholding and deferral of removal under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention Against Torture).

The Petitioner was taking 35 pills a day to treat his illnesses and was informed by prison doctors that he would die without this medication. He feared removal to Nigeria because citizens convicted of crimes in foreign countries were immediately taken into custody and imprisoned. He testified that prison conditions in Nigeria were poor and that he would not have access to treatment for HIV. He further claimed that people living with HIV were socially ostracized and that he would be tortured in prison on account of his HIV status. The Petitioner also submitted a US State Department report that indicated that prison officials in Nigeria often withheld medical treatment as a form of punishment.

The immigration judge concluded that the Petitioner was statutorily ineligible for asylum and withholding of removal as a result of his controlled substance conviction. The judge also denied his deferral of removal claim under the Convention Against Torture, holding that medical deprivation and ostracism in Nigeria would not amount to torture under the Convention. The Board of Immigration Appeals dismissed the Petitioner's appeal.

The Petitioner appealed the Board of Immigration Appeals' denial of his claim for deferral of removal under the Convention Against Torture.

Decision and Reasoning

The Court vacated the Board of Immigration Appeals' ruling in part and remanded for further consideration of the evidence.

The Court stated that to prevail on a claim under the Convention Against Torture an applicant must prove that it is more likely than not that he or she will be tortured if removed to the designated country. The Court noted that the limited analysis in the Board of Immigration Appeals' (BIA) decision made it difficult to review the decision in an adequate manner.

The Court held that the evidence did not support the BIA's statement that the Petitioner was not likely to be detained upon return to Nigeria. It noted that the Seventh Circuit Court of Appeals had confirmed that Nigeria had an official policy of imprisoning its citizens for drug-related crimes committed abroad. The Court held that the BIA's reasoning was at odds with the [immigration judge's] decision, [the Petitioner's] credible and judicially-noticeable facts. The Court thus vacated the BIA's denial of deferral or removal under the Convention Against Torture and remanded the matter to the BIA for a clearer explanation of its decision.

The Court further held that the BIA and the immigration judge had failed to acknowledge or analyse the

Petitioner's claim that he would be individually and intentionally targeted for mistreatment because of his HIV status and associated medical problems. The Court stated that for the purposes of the Convention Against Torture, the Petitioner needed to show that a government official or private actor . . . specifically intended to torture him. In this regard, the Court observed that the Petitioner had provided credible evidence showing that he would be intentionally tortured in prison because of his HIV status, and that prison officials sometimes withhold medicine as a form of punishment. The Court held that the BIA and immigration judge had overlooked this evidence and that it may demonstrate the likelihood that the Petitioner would be subjected to torture.

Decision Excerpts

"[1] To prevail on a claim under [the Convention Against Torture], a petitioner must prove that it is more likely than not that he or she will be tortured if removed to the designated country."

"[5] In *Villegas v. Mukasey*, however, we clarified that a petitioner must show for purposes of [Convention Against Torture] relief that someone "either a government official or private actor" specifically intended to torture him or her. 523 F.3d 984, 989 (9th Cir. 2008). It is only when the alleged torture would be at the hand of a private entity is mere awareness or wilful blindness by the government sufficient."

"[7] Unlike in *Villegas*, however, the thrust of Eneh's argument is not just that the conditions in Nigerian prisons are torturous generally, but that Nigerian prison officials would single him out for mistreatment. Eneh specifically testified that he would be intentionally tortured in Nigerian prisons because he has AIDS, and he provided documentary evidence that prison officials withhold medicine as a form of punishment. The IJ never acknowledged this crucial evidence, despite (1) explicitly finding Eneh to be credible, (2) making detailed findings of fact that otherwise closely tracked Eneh's testimony and (3) expressly acknowledging that "people in Nigeria, with AIDS or HIV are ostracized publicly and socially." The IJ should have at least considered Eneh's testimony and documentary evidence regarding intentional torture, and there is no indication that he did. See *Wakkary v. Holder*, 558 F.3d 1049, 1068 (9th Cir. 2009) ("[T]he CAT regulations cast a wide evidentiary net, providing that "all evidence relevant to the possibility of future torture shall be considered." (quoting 8 C.F.R. Â§ 1208.16(c)(3)) (emphasis added))."