

AIC Applauds Ruling Allowing Immigration Judges to Consider Evidence of Hardship

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American Immigration Council Applauds Ruling Allowing Immigration Judges to Consider Evidence of Hardship

Washington, D.C.—Last Friday, the U.S. Court of Appeals for the Third Circuit issued a unanimous ruling that will allow immigration judges to exercise discretion in cases involving lawful permanent residents (LPRs) whose removal would cause extreme hardship to family members in the United States. The ruling marks the fourth opinion from a federal appellate court to reject a contrary decision of the Board of Immigration Appeals. The American Immigration Council's Legal Action Center, which filed an amicus brief in the case and participated in the oral argument, applauds today's ruling and calls on the Board to overturn its decision in *Matter of Koljenovic*, 25 I&N Dec. 219 (2010).

The case involved a 1996 amendment to the Immigration and Nationality Act that prevents immigration judges from considering evidence of hardship in certain cases involving immigrants who were "admitted" to the United States as LPRs. For many LPRs facing removal, the ability to obtain such a hardship waiver is the only means to avoid separation from U.S. family members. In its amicus brief, the Council argued that the Board ignored the plain language of the statute and improperly conflated applicants who entered the country as LPRs with those who gained LPR status post-entry.

The beneficiary of today's decision, Zaman Hanif, has resided in the United States for more than 25 years. The Department of Homeland Security initiated removal proceedings against him in 2009 based on a criminal conviction that resulted in four months' incarceration. Hanif sought a waiver of inadmissibility on account of the hardship his removal would create for his immediate family members, including his wife, two elderly parents, and U.S. citizen children.

An immigration judge and the Board held that Hanif was ineligible to present evidence of hardship based on the Board's decision in *Matter of Koljenovic*. In reversing the decision, the Third Circuit stated that it would "accord no deference to the BIA's interpretation, which we find to be at odds with the wording and clear meaning of the statute."

The case is *Hanif v. Attorney General of the United States*, No. 11-2643. Ryan Muennich of New York City represented the petitioner.

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