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Toussaint v. Atty Gen USA

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PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 05-3311

EDNA TOUSSAINT,

Petitioner

v.

ATTORNEY GENERAL OF THE UNITED STATES,

Respondent

On Petition for Review of a decision and order of
the Board of Immigration Appeals
(BIA No. A30-139-224)

Argued June 13, 2006

BEFORE: FISHER, GREENBERG, and LOURIE,* Circuit Judges

(Filed: July 26, 2006)

ORDER AMENDING OPINION

It is hereby ordered that the opinion of the court in this case filed July 26, 2006, is amended as follows:

*Honorable Alan D. Lourie, United States Circuit Judge for the Federal Circuit, sitting by designation.

(1) The second complete paragraph in footnote 3, page 5, of the slip opinion as it

originally read (see Toussaint v. Attorney General, 455 F.3d 409, 412 n.3 (3d Cir. 2006)) is deleted and the following paragraph is substituted for it:

Although the government does not dispute that we have jurisdiction over this petition to review the decision and order of the BIA, we explain our jurisdiction because, as we recently stated in Romanishyn v. Attorney General, 455 F.3d 175, 180 (3d Cir. 2006), “[o]ur jurisdiction extends only to constitutional claims and questions of law.” (citing 8 U.S.C. § 1252(a)(2)(D)). We have recognized that “this [jurisdiction] includes review of the BIA’s application of law to undisputed fact.” Singh v. Gonzales, 432 F.3d 533, 541 (3d Cir. 2006). The question here involves not disputed facts but whether the facts, even when accepted as true, sufficiently demonstrate that it is more likely than not that she will be subject to persecution or torture upon removal to Haiti. Therefore, we have jurisdiction to review the BIA’s application of law to the facts of this case.

(2) The last sentence in the second complete paragraph on page 9 of the slip opinion as it originally read (see Toussaint v. Attorney General, 455 F.3d at 415) is deleted and the following sentence is substituted for it:

We are satisfied that the record both with respect to the evidence presented and lack of evidence supports the BIA’s decision, and thus, even if our jurisdiction extended to reviewing the BIA’s decision on this point, we could not conclude that a reasonable fact-finder would be compelled to find to the contrary. See id.

By the court,

/s/ Morton I. Greenberg
Circuit Judge

DATED: September 29, 2006
CRG/cc: Matthew L. Guadagno, Esq.
Ruchi Thaker, Esq.
David J. Kline, Esq.
Carl H. McIntyre Jr., Esq.
Papu Sandhu, Esq.