

In re E-L-H- et al., Respondents

Decided January 30, 1998

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

Precedent decisions of the Board of Immigration Appeals which have been certified to the Attorney General for review are binding on the Immigration and Naturalization Service and the Immigration Judges and continue to serve as precedent in all proceedings involving the same issue or issues unless or until they are modified or overruled by the Board or the Attorney General.

Pro se

Scott M. Rosen, Appellate Counsel, for the Immigration and Naturalization Service

Before: Board Panel: DUNNE, Vice Chairman; VACCA and VILLAGELIU, Board Members.

DUNNE, Vice Chairman:

The Immigration and Naturalization Service has filed a motion to reconsider our ruling of August 29, 1997, which reversed the Immigration Judge's decision to deny the respondents asylum and withholding of deportation under sections 208 and 243(h) of the Immigration and Nationality Act, 8 U.S.C. §§ 1158 and 1253(h)(1994). We have jurisdiction over this matter pursuant to 8 C.F.R. § 3.2(a)(1997). The motion will be denied.

The Service argued in its motion that the Board's reliance on *Matter of C-Y-Z*, 21 I&N Dec. 915 (BIA 1997), in our August 29, 1997, decision was improper. It contends that because *Matter of C-Y-Z* has been certified to the Attorney General, the Board should not have relied on it as a precedent in deciding the instant case. The Service cited *Matter of Farias*, 21 I&N Dec. 269 (BIA 1996, 1997; A.G. 1997), for the proposition that a decision of the Board is not final while it is under Attorney General review.

We have carefully considered the arguments and authority cited by the Service. We agree with the Service that Board decisions are final except in those cases reviewed by the Attorney General. *See* 8 C.F.R. §§ 3.1(d)(2), (h)(1997). However, "[e]xcept as they may be modified or overruled by the Board or the Attorney General, decisions of the Board shall be binding on all officers and employees of the Service or Immigration Judges in the administration of the Act, and selected decisions designated by the Board shall serve as precedents in all proceedings involving the same issue or issues." 8 C.F.R. § 3.1(g).

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We find that although *Matter of C-Y-Z*, *supra*, has been certified to the Attorney General for review, the decision remains binding unless or until it is modified or overruled by the Board or the Attorney General. *See* 8 C.F.R. § 3.1(g). We therefore conclude that our reliance on *Matter of C-Y-Z* was proper.

Accordingly, the Service's motion will be denied.

ORDER: The motion to reconsider is denied.