United States Court of Appeals
For the First Circuit

Nos. 21-1045 & 21-1616

ADEKUNLE OLUWABUMWI ADEYANJU,

Petitioner,

v.

MERRICK B. GARLAND, Attorney General of the United States,

Respondent.

PETITIONS FOR REVIEW OF AN ORDER OF
THE BOARD OF IMMIGRATION APPEALS

Before

Thompson, Hawkins,* and Barron,
<u>Circuit Judges</u>.

<u>SangYeob Kim</u>, with whom <u>Ronald L. Abramson</u>, <u>Emily Assunta White</u>, <u>Shaheen & Gordon P.A.</u>, <u>Gilles Bissonnette</u>, <u>Jennifer Lyon</u>, and <u>American Civil Liberties Union of New Hampshire</u>, were on brief, for petitioner.

<u>Lindsay Corliss</u>, Trial Attorney, Office of Immigration Litigation, with whom <u>Brian Boynton</u>, Acting Assistant Attorney General, Civil Division, <u>John S. Hogan</u>, Assistant Director, Office of Immigration Litigation, and <u>Kiley Kane</u>, Senior Litigation Counsel, Office of Immigration Litigation, were on brief, for respondent.

* Of the Ninth Circuit, sitting by designation.

February 24, 2022

THOMPSON, **Circuit Judge**. When the Board of Immigration Appeals ("BIA") considers an appeal, it is bound, as we are, by certain standards of review. It reviews factual findings of an Immigration Judge ("IJ") only for clear error. But it is free to conduct discretionary-relief determinations based on those factual findings afresh without any deference to the IJ's conclusion. In today's case, the primary question is where the line lies between an IJ's factual finding, reviewed for clear error, and a discretionary judgment call, reviewed by the BIA de novo. We must consider if the BIA properly applied clear-error review to truly factual findings. We also consider whether the BIA erred in refusing to remand this case to the IJ. Agreeing with some, but not all, of the petitioner's contentions, we grant only in part one of the petitions for review.

BACKGROUND

We begin by exploring how the parties got here, taking the facts from the administrative record, including Petitioner Adekunle Oluwabumwi Adeyanju's testimony before the IJ. See Martínez-Pérez v. Sessions, 897 F.3d 33, 37 n.1 (1st Cir. 2018).

Adeyanju is a native and citizen of Nigeria who entered the United States on March 7, 2013, using a B-2 tourist visa.[1] He has resided here ever since, now residing in Maine.

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[1] A "B-2 visa" is available, for example, to "tourists and those coming for social visits, health reasons, or participation

Before his arrival from Nigeria, he submitted at least two applications for a visa, one in 2010, the other in 2011. In each, Adeyanju represented that he had a live-in domestic partner in Nigeria to whom he was engaged. Within a month of his arrival here, though, Adeyanju met, via an online dating site, Miranda Raymond, who seven months later, in the autumn of 2013, would go on to become his first U.S.-citizen wife. About six months after his marriage, Adeyanju was granted conditional resident status based on his marriage to a U.S. citizen. The couple subsequently filed a joint I-751 petition to remove the conditions of his residency.[2]

Before the I-751 petition was adjudicated, though, the marriage apparently deteriorated and by 2015, Adeyanju was no longer living with Raymond. Instead, he was residing with Rebecca Dyer, whom he said was, at that time, his roommate. During their time together, Rebecca became pregnant with Adeyanju's child, who was born in April 2016.

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in amateur music and sports events." 1 Charles Gordon et al., Immigration Law and Procedure § 1.03 (2021). It doesn't permit employment while in the U.S., and it ordinarily stays valid for at least six months. Id.

[2] An "I-751 petition" is immigration lingo for the form filed jointly by a U.S.-citizen spouse and their qualifying immigrant spouse to remove the conditional basis of the immigrant spouse's residency. See 4 Gordon et al., supra, § 42.04; see also 8 U.S.C. § 1186a(c). It is filed within the 90-day window before the second anniversary of the immigrant spouse's obtaining conditional residency. 8 C.F.R. § 216.4(a)(1).

Also in 2014 and 2015, a number of police reports in Maine were generated for Adeyanju's behavior towards women. In short, on at least six occasions, Adeyanju was reported as engaging in harassing or suspicious behavior towards women as young as seventeen. Women reported that Adeyanju approached them in public places and asked them personal questions, including whether they were in high school. He requested their phone numbers or solicited them to go out with him, persisting even after the women declined. Nevertheless, none of these incidents resulted in any arrests or charges.

In January 2018, the United States Customs and Immigration Service ("USCIS") notified Adeyanju and Raymond that it intended to deny their jointly filed I-751 petition and did so in May 2018.[3] In issuing the denial, USCIS reasoned that Adeyanju intended to commit marriage fraud with Raymond. To support its finding, USCIS relied on the separate living arrangements, records of Adeyanju's police encounters involving other women, and evidence suggesting there was not a "bona fide familial relationship," including: the lack of knowledge about each spouse's finances, activities, or personal relationships; the

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[3] When USCIS finds potential evidence that the marriage was not bona fide, it may issue a "notice of intent to deny" the petition, then giving the immigrant the opportunity to rebut the information before issuing the formal denial. 4 Gordon et al., supra, § 42.06.

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