

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, Foley Square, in the City of New York, on the 2nd day of May, two thousand and six.

PRESENT:

HON. JOHN M. WALKER, JR.,
Chief Judge,
HON. JON O. NEWMAN,
HON. ROSEMARY S. POOLER,
Circuit Judges.

Kanailal Saha,

Petitioner,
-v.-

No. 03-40989-ag
NAC

Alberto R. Gonzales,¹ Attorney General,
Respondent.

FOR PETITIONER Roland Gell, Gell & Gell, New York, New York.

FOR RESPONDENT: Chuck Rosenberg, U.S. Atty., Jim McAlister, Asst. U.S. Atty.,
Houston, Texas.

UPON DUE CONSIDERATION, of this petition for review of the BIA decision it is hereby

¹Pursuant to Federal Rule of Appellate Procedure 43(c)(2), Attorney General Alberto R. Gonzales is automatically substituted for former Attorney General John Ashcroft as the respondent in this case.

ORDERED, ADJUDGED, AND DECREED that the petition for review is DENIED.

Kanailal Saha petitions for review of the October 2003 decision of the Board of Immigration Appeals ("BIA") denying his motion to reopen removal proceedings. We assume the parties' familiarity with the facts and procedural history of this case.

This Court reviews the BIA's denial of a motion to reopen for abuse of discretion. *See Kaur v. BIA*, 413 F.3d 232, 233 (2d Cir. 2004) (per curiam). An abuse of discretion may be found where the BIA's decision "provides no rational explanation, inexplicably departs from established policies, is devoid of any reasoning, or contains only summary or conclusory statements; that is to say, where the Board has acted in an arbitrary or capricious manner." *Id.* at 233-34.

Pursuant to 8 C.F.R. § 1208.8(b), "[a]n asylum applicant who leaves the United States pursuant to advance parole under § 1212.5(f) . . . and returns to the country of claimed persecution shall be presumed to have abandoned his or her application, unless the applicant is able to establish compelling reasons for such return." The IJ originally determined that Saha had not shown compelling reasons for his return to Bangladesh. Because Saha failed to present any evidence of country conditions in his motion to reopen that differed from that presented at the original hearing, the BIA did not abuse its discretion in denying Saha's motion to reopen. *See* 8 C.F.R. § 1003.2(c)(i).

For the foregoing reasons, the petition for review is DENIED. Having completed our review, any stay of removal that the Court previously granted in this petition is VACATED, and any pending motion for a stay of removal in this petition is DENIED as moot. Any pending request for oral argument in this petition is DENIED in accordance with Federal Rule of Appellate Procedure 34(a)(2), and Second Circuit Local Rule 34(d)(1).

FOR THE COURT:

Roseann B. MacKechnie, Clerk

By: _____