

MAY 11 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

GUO QIANG YE,

Petitioner,

v.

ERIC H. HOLDER, JR., Attorney General,

Respondent.

No. 05-76126

Agency No. A073-595-639

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Argued and Submitted May 5, 2009
Pasadena, California

Before: GOODWIN, O'SCANNLAIN and GRABER, Circuit Judges.

Guo Qiang Ye, a citizen of China, petitions for review of the Board of Immigration Appeals' dismissal of his appeal of an immigration judge's decision denying his application for adjustment of status.

When an alien marries a U.S. citizen during removal proceedings and seeks adjustment of status, the immigration judge may investigate the bona fides of the

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

marriage even if the government already has approved the I-130 visa application. An immigration judge has authority over applications for relief under section 245 of the Immigration and Nationality Act, 8 U.S.C. § 1255. 8 C.F.R. §§ 1240.1(a)(1)(ii), 1245.2(a)(1). An I-130 visa does not automatically establish the bona fides of a marriage in the context of removal proceedings. *See Agyeman v. INS*, 296 F.3d 871, 879 (9th Cir. 2002) (“While an [approved] I 130 establishes *eligibility* for status, the Attorney General—or in the context of deportation proceedings, the IJ—must still decide to accord the status.” (emphasis added)).

“This court retains jurisdiction over petitions for review that raise colorable constitutional claims or questions of law.” *Bazua-Cota v. Gonzales*, 466 F.3d 747, 748 (9th Cir. 2006) (citing 8 U.S.C. § 1252(a)(2)(D)). In the absence of constitutional claims or questions of law, however, the immigration judge’s decision to deny petitioner’s application for adjustment of status is a discretionary determination that is unreviewable. *See* 8 U.S.C. § 1252(a)(2)(B)(i); *Bazua-Cota*, 466 F.3d at 748-49.

PETITION FOR REVIEW DENIED in part; DISMISSED in part.