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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

LUIS ALBERTO CALDERON, Petitioner, v. PAMELA BONDI, Attorney General, Respondent.	No. 24-2619 Agency No. A095-745-052 MEMORANDUM[*]

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

Argued and Submitted March 3, 2025
Pasadena, California

Before: SANCHEZ and H.A. THOMAS, Circuit Judges, and LIBURDI, District Judge.[**]
Dissent by Judge LIBURDI.

Luis Alberto Calderon, a native and citizen of Peru, appeals an order of the Board of Immigration Appeals ("BIA") finding him statutorily ineligible for special rule cancellation of removal under the Violence Against Women Act

[*] This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

[**] The Honorable Michael T. Liburdi, United States District Judge for the District of Arizona, sitting by designation.

("VAWA"), 8 U.S.C. § 1229b(b)(2). The BIA determined that Calderon had not been married to a U.S. citizen spouse, *see id.* § 1229b(b)(2)(A)(i)(I), after the marriage to his former wife was annulled in California, rendering his marriage void *ab initio*. Calderon contends that the BIA both misapplied California law and failed to follow its own precedents requiring the agency to consider whether it should construe his annulment retroactively for immigration purposes, independently of whether state law would find his marriage valid. We agree and grant his petition.

"Where the BIA conducts its own review of the evidence and law, rather than adopting the [Immigration Judge's] decision, our review is limited to the BIA's decision, except to the extent the IJ's opinion is expressly adopted." *Guerra v. Barr*, 974 F.3d 909, 911 (9th Cir. 2020) (quoting *Rodriguez v. Holder*, 683 F.3d 1164, 1169 (9th Cir. 2012)). We review de novo the BIA's legal conclusions, *see Bringas-Rodriguez v. Sessions*, 850 F.3d 1051, 1059 (9th Cir. 2017) (en banc), and whether the BIA has clearly departed from its own legal standards for abuse of discretion, *see Salgado v. Sessions*, 889 F.3d 982, 987 (9th Cir. 2018). We have jurisdiction to review "constitutional claims or questions of law" under 8 U.S.C. § 1229b pursuant to 8 U.S.C. § 1252(a)(2)(D). *See Magana-Magana v. Bondi*, 129 F.4th 557, 566 (9th Cir. 2025).

Calderon applied for VAWA special rule cancellation under 8 U.S.C.

§ 1229b(b)(2)(A)(i)(I), which permits the Attorney General to cancel the removal of a non-citizen who has suffered abuse from a U.S. citizen spouse, among other requirements not at issue here.[1] Because the statute does not define the term "spouse," the BIA sought to ascertain whether Calderon had been lawfully married under California law, the place of his marriage and its dissolution. The California Superior Court adjudged Calderon's marriage a nullity pursuant to California Family Code § 2210(d). Under California law, the "effect of a judgment of nullity of marriage is to restore the parties to the status of unmarried persons." Cal. Fam. Code § 2212(a).

The BIA erred in concluding that a judgment of nullity of marriage in California must always be given retroactive effect such that an annulled marriage is rendered void *ab initio* (also known as the "relation back" doctrine). Neither the Family Code nor the nullity judgment here states that a judgment of nullity required that the voidable marriage be construed void *ab initio*. *See* Cal. Fam. Code §§ 1–20104. The California Supreme Court has explained that the relation

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[1] 8 U.S.C. § 1229b(b)(2)(A)(i)(I) states in full that:

> The Attorney General may cancel removal of, and adjust to the status of an alien lawfully admitted for permanent residence, an alien who is inadmissible or deportable from the United States if the alien demonstrates that . . . the alien has been battered or subjected to extreme cruelty by a spouse or parent who is or was a United States citizen (or is the parent of a child of a United States citizen and the child has been battered or subjected to extreme cruelty by such citizen parent) . . . .

back doctrine is "not without its exceptions" and is a "legal fiction" used by courts "to do substantial justice as between the parties to a voidable marriage." *Sefton v. Sefton*, 291 P.2d 439, 441 (Cal. 1955) (in bank). The test for applying the doctrine "to voidable marriages is whether it effects a result which conforms to the sanctions of sound policy and justice as between the immediate parties thereto, their property rights acquired during that marriage and the rights of their offspring."[2] *Id.*

Under the California Supreme Court's controlling interpretation of state law, then, an annulment in California does not categorically void a marriage *ab initio*. Rather, courts must apply the relation back doctrine on a case-specific basis after analyzing whether voiding the marriage *ab initio* accords with sound public policy and effects substantial justice between the parties-in-interest (here, Calderon and his ex-spouse). *Id.* This aligns with our own application of California's annulment law. *See, e.g.*, *Folsom v. Pearsall*, 245 F.2d 562, 565–66 (9th Cir. 1957) (using *Sefton* test to apply relation back doctrine); *Purganan v. Schweiker*, 665 F.2d 269, 270–71 (9th Cir. 1982) (applying *Sefton* test in declining to apply relation back doctrine). The BIA thus erred in concluding that California law categorically

[2] In concluding that California law construes annulments to render a marriage void *ab initio*, the BIA relied in part on *Millar v. Millar*, which stated that California annulments relate back to "determine[] that no valid marriage ever existed." 167 P. 394, 398 (Cal. 1917). The California Supreme Court later clarified in *Sefton* that this is not always the case. *See* 291 P.2d at 441.

required it to give retroactive effect to Calderon's state court judgment of nullity of marriage.

The BIA also abused its discretion by not adhering to its own precedents, which require it to consider, under all the circumstances of the case, whether to give Calderon's annulment retroactive effect for immigration purposes, independently of whether his marriage would be considered valid under California law. *See Matter of Astorga*, 17 I. & N. Dec. 1, 4 (BIA 1979); *Israel v. INS*, 785 F.2d 738, 740 (9th Cir. 1986) (BIA abuses its discretion when it "acts arbitrarily" by "disregard[ing] its own precedents and policies without giving a reasonable explanation").

Prior to deciding *Matter of Astorga*, the BIA's general practice had been to construe an annulment retroactively for immigration purposes if the relevant state's law would relate back an annulment to void a marriage *ab initio. See Matter of Samedi*, 14 I. & N. Dec. 625, 625–26 (BIA 1974). But the BIA did not always adhere to this policy, including in cases involving California annulments. In *Matter of Castillo-Sedano*, the BIA declined to apply the relation back doctrine "blindly where to do so would result in a gross miscarriage of justice" even if California law would have related back the annulment. 15 I. & N. Dec. 445, 446 (BIA 1975). Similarly in *Matter of Wong*, the BIA declined to relate back the

petitioner's California annulment "[e]ven though the annulment might be given retroactive effect, by the California courts." 16 I. & N. Dec. 87, 89 (BIA 1977).

In *Matter of Astorga*, the BIA ended its general practice of deferring to state law when deciding whether to give retroactive effect to a state court marriage annulment for immigration purposes. *Astorga* established that "annulment decrees may have different effects depending on the nature of the case and the purposes to be served by giving an annulment decree retroactive effect." 17 I. & N. Dec. at 4. In *Matter of Magana*, 17 I. & N. Dec. 111 (BIA 1979), the BIA elaborated on this principle and explained that in "dealing with the retroactivity of annulments . . . we have applied the relation back doctrine only where to do so would bring about a more just result." *Id.* at 114. Notably, *Astorga* and *Magana* both involved marriages annulled under Washington law, yet the BIA, after considering all the circumstances in each case, applied the relation back doctrine in *Astorga* but declined to do so in *Magana*. *Compare Astorga*, 17 I. & N. Dec. at 5, *with Magana*, 17 I. & N. Dec. at 113.

Accordingly, under the BIA's own controlling precedents, the BIA must consider all the circumstances of the instant case, such as whether relating back Calderon's annulment would result in an "injustice to an innocent respondent," *see Matter of Yaldo*, 12 I. & N. Dec. 830, 832 n.1 (BIA 1968), *aff'd sub nom.*, *Yaldo v. INS*, 424 F.2d 501 (6th Cir. 1970), a "gross miscarriage of justice," *Castillo-*

Sedano, 15 I. & N. Dec. at 446, or would cure an immigration law violation, *Astorga*, 17 I. & N. Dec. at 4, before deciding whether to give his annulment retroactive effect for immigration purposes. We reverse and remand to the BIA to consider, in the first instance, what effect Calderon's annulment should have for immigration purposes after considering all the circumstances of his case and correctly applying California law.[3]

REVERSED AND REMANDED[4]

[3] Calderon also alleges the Immigration Judge violated his due process rights by denying his request for a continuance to present argument on the effect of annulments in California for immigration purposes. However, Calderon has shown no prejudice because the BIA reviewed both the denial of the continuance and the immigration effect issue de novo. *See Arizmendi-Medina v. Garland*, 69 F.4th 1043, 1048 (9th Cir. 2023) (requiring a showing of prejudice to establish due process violation).

[4] Petitioner's motion (Dkt. 39) is denied as moot without prejudice to refiling.

Calderon v. Bondi, 24-2619
LIBURDI, District Judge, dissenting in part:

I join the majority's well-reasoned conclusion that the BIA erred in its application of California's relation back doctrine. I disagree, and therefore dissent, as to whether the BIA abused its discretion in arbitrarily departing from its own precedent. The BIA acts arbitrarily if it "disregard[s] its own precedents and policies *without* giving a reasonable explanation." *Israel*, 785 F.2d at 740 (emphasis added). Here, the BIA provided a reasonable explanation for its decision, grounded in statutory analysis and analogical reasoning.

In deciding Calderon's appeal, the BIA rigorously analyzed VAWA's provisions for special rule cancellation of removal, which identify three types of eligible relationships: (1) those where the noncitizen is a spouse of the abuser; (2) those where the noncitizen shares a common child with the abuser; and (3) those where the noncitizen's marriage to the abuser is void by bigamy. *See* 8 U.S.C. § 1229b(b)(2)(A)(i). Two of these are non-spousal relationships. The BIA inferred that because Congress enumerated some non-spousal relationships as qualifying for special rule cancellation, other non-spousal relationships not listed—such as a marriage void by fraud *ab initio*—are presumed deliberately excluded.[1]

[1] The BIA relied on other immigration laws to support its reading, pointing specifically to 8 U.S.C. §§ 1154(a)(1)(A)(iii)(II)(aa)(CC)(ccc); (a)(1)(B)(ii)(II)(aa)(CC)(bbb), which outlines the procedures for noncitizens who

The BIA also recognized that, historically, it has considered the totality of the circumstances in deciding whether to give retroactive effect to an annulment decree for immigration purposes. But those decisions fall into two camps the BIA deemed distinguishable from Calderon's appeal. In the first, the BIA examined the retroactive effect of an annulment in the context of visa petitions, where the term "spouse" was interpreted without further statutory guidance. *See Castillo-Sedano*, 14 I. & N. Dec. at 446; *Astorga*, 17 I. & N. Dec. at 3-4; 8 U.S.C. § 1151(b)(2)(A)(i). The BIA noted that unlike those statutes, VAWA offers statutory guidance in the form of an exhaustive list of non-spousal relationships that qualify for special rule cancellation. *See* 8 U.S.C. § 1229b(b)(2)(A)(i). The second group of decisions dealt with the retroactive effect of an annulment decree to cure a ground of exclusion. *See Magana*, 17 I. & N. Dec. at 113; *Wong*, 61 I. & N. Dec. at 89. The BIA deemed these cases "not relevant" to Calderon's appeal.

Distinguishing its past decisions based on its reading of the statute, the BIA declined to extend special rule cancellation to other non-spousal relationships not specifically enumerated in the statute, including Calderon's. This is a sufficient explanation as to why the BIA departed from its approach on prior occasions.

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have been abused to receive adjustment of status. The BIA reasoned that because the adjustment of status statute is drafted broadly to encompass a wide range of marriage dissolutions relating to abuse, Congress deliberately restricted eligibility for special rule cancellation of removal to a narrowly defined class.

Based on the above, I would hold the BIA provided a reasonable explanation for its conscious departure from its past decisions and therefore did not act arbitrarily or abuse its discretion. Because I would remand solely on the BIA's misapplication of California law, I respectfully dissent in part.