

**23-583 BOUARFA V. MAYORKAS**

DECISION BELOW: 75 F.4th 1157

LOWER COURT CASE NUMBER: 22-12429

QUESTION PRESENTED:

When considering whether to approve a petition for an immigrant visa, the government must adhere to certain nondiscretionary criteria. *See, e.g.*, 8 U.S.C. § 1154 (c) (providing that "[n]o petition shall be approved" if the individual seeking a visa has previously entered a marriage "for the purpose of evading the immigration laws"). When a visa petition is denied based on a petitioner's failure to satisfy such a nondiscretionary requirement, it is generally understood that the petitioner has a right to judicial review of that decision.

Once a visa petition has been approved, the government has the power to revoke approval of the visa petition for "good and sufficient cause" pursuant to 8 U.S.C. § 1155. The circuits are in open conflict over whether judicial review is available when the government revokes an approved petition on the ground that it had initially misapplied nondiscretionary criteria during the approval process. The Sixth and Ninth Circuits hold that judicial review is available under these circumstances, but the Second, Third, Seventh, and now the Eleventh Circuit all hold that revocations are "discretionary" decisions for which there is no right to judicial review, even when they are based on a misapplication of the same nondiscretionary criteria that would be reviewable if the petition had originally been denied.

The question presented is:

Whether a visa petitioner may obtain judicial review when an approved petition is revoked on the basis of nondiscretionary criteria.

CERT. GRANTED 4/29/2024