

Case Summary: Immigration Law Advisor

U.S. Department of Justice, Executive Office for Immigration Review

<http://www.justice.gov/eoir/immigration-law-advisor>

In **Matter of Z-Z-O-**, 26 I&N Dec. 586 (BIA 2015), the Board revisited the issue of what standard of review is applicable to an Immigration Judge's predictive findings of future events and held that those are factual findings subject to clear error review. Additionally, the Board held that the question of whether an asylum applicant has an objectively reasonable fear of persecution, based on events that the Immigration Judge has found may occur, is a legal determination which is reviewed de novo. Observing that the Second, Third, Fourth, Seventh, Ninth, and Eleventh Circuits have all held that an Immigration Judge's findings as to future events are factual and are to be reviewed under the clear error standard, the Board noted that the courts have historically, and in contexts other than immigration, regarded findings concerning future events to be factual determinations. The Board explained that the courts have held that although future events have not yet occurred, a decision-maker like an Immigration Judge is deciding now, "as part of a factual framework for determining legal effect," the present probability of a future event. Adopting the courts' position, the Board held that predictive findings are factual and subject to review for clear error. The Board overruled *Matter of A-S-B-*, 24 I&N Dec. 493 (BIA 2008), and *Matter of V-K-*, 24 I&N Dec. 500 (BIA 2008), to the extent that those decisions regarded predictive findings as non-factual. Addressing the question whether an asylum applicant has demonstrated an objectively reasonable fear of persecution based on future events that the Immigration Judge has found may occur, the Board identified this as a legal determination, subject to de novo review. Thus, the Board announced that it would accept underlying factual determinations unless they are clearly erroneous and would review de novo whether such facts meet the legal requirements for relief from removal. Applying these standards, the Board concurred with the Immigration Judge that the respondent had not established a well-founded fear of persecution if returned to China. The appeal was dismissed.