

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 held that an Immigration Judge's predictive findings as to what may occur in the future are findings of fact, which are reviewed under the clearly erroneous standard. The Board's present decision overrules contrary holdings in *Matter of V-K-*, 24 I&N Dec. 500 (BIA 2008), and *Matter of A-S-B-*, 24 I&N Dec. 493 (BIA 2008). However, the Board held that it will continue to review de novo whether an asylum applicant has shown an objectively reasonable fear of persecution based on the Immigration Judge's findings as to what may occur upon his or her return to the country of removal. The question of whether an applicant has met his burden in this respect is a legal determination that is subject to de novo review. The respondent had sought asylum based on past events and a fear of future harm resulting from enforcement of China's one-child policy. The Immigration Judge determined that the respondent had not established asylum eligibility through either past persecution or an independent well-founded fear of future persecution. The Board first affirmed the Immigration Judge's conclusion that the respondent had not suffered past persecution in China. Turning to the likelihood of future persecution, the Board noted that six circuit courts of appeals have held that an Immigration Judge's predictive findings must be reviewed under the clearly erroneous standard. The Board acceded to this majority view concerning predictive findings. Applying this standard to the respondent's case, the Board found no clear error in the Immigration Judge's findings as to what may occur to the respondent if he is returned to China. Based on the Immigration Judge's findings, the Board affirmed the Immigration Judge's determination that the respondent had not satisfied his burden of showing that his fear of persecution in China was objectively reasonable.