

FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

YI QUAN CHEN,

Petitioner,

v.

IMMIGRATION AND NATURALIZATION
SERVICE,

Respondent.

No. 00-70478

INS No.
A77-234-212

ORDER

On Remand from the United States Supreme Court

Filed April 25, 2003

Before: Donald P. Lay,* Stephen S. Trott and
Marsha S. Berzon, Circuit Judges.

ORDER

In our prior opinion, *Chen v. I.N.S.*, 266 F.3d 1094 (9th Cir. 2001), this court reviewed Yi Quan Chen's application for asylum and withholding of removal pursuant to § 208(a) and § 241(b)(3) of the Immigration and Nationality Act (I.N.A.), 8 U.S.C. §§ 1158(a), 1231(b)(3). The Board of Immigration Appeals (BIA) had dismissed Chen's application and agreed with the Immigration Judge's conclusion that Chen lacked credibility. This court overruled the BIA, holding that Chen had established his eligibility for asylum and withholding of removal. *Chen*, 266 F.3d at 1099. We found that Chen was credible and had produced direct and specific evidence of past persecution. *Id.* at 1101. We also held that Chen had a well-

*The Honorable Donald P. Lay, Senior United States Circuit Judge for the Eighth Circuit, sitting by designation.

founded fear of future persecution and established a clear probability that he would be persecuted if returned to China. *Id.* at 1099. We ultimately remanded the case to the Attorney General to determine in the exercise of his discretion whether to grant asylum to Chen. *Id.* at 1103.

In *I.N.S. v. Ventura*, 123 S. Ct. 353 (2002), the Supreme Court held that the Ninth Circuit had erred by failing to remand an asylum case to the BIA for additional investigation or explanation relating to the changed circumstances in Guatemala. The Court pointed out that under 8 U.S.C. § 1158(a) and 8 U.S.C. § 1253(h)(1) (1994), the law entrusts the agency to make the basic asylum eligibility decision. *Ventura*, 123 S. Ct. at 355-56.

On November 12, 2002, the Supreme Court vacated our ruling in *Chen* and remanded the case to this court for further consideration in light of *Ventura*. Upon reconsideration, we now remand to the BIA for it to decide Chen's application for asylum and withholding of removal. In doing so, we stress that this court's reversal of the BIA's adverse credibility finding still stands based upon the analysis in our prior opinion. We held the BIA failed to provide the requisite specific, cogent reason for discrediting Chen.

The case is remanded to the BIA for further consideration and investigation in light of our prior ruling on Chen's credibility.

REMANDED.

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