

NOT RECOMMENDED FOR PUBLICATION

File Name: 12a0186n.06

Nos. 08-4139, 09-3587

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Feb 16, 2012
LEONARD GREEN, Clerk

MUSA ABDUL IKHARO,)
)
 Petitioner,)
)
 v.)
)
 ERIC H. HOLDER, JR., Attorney General,)
)
 Respondent.)
 _____)

ON PETITION FOR REVIEW FROM THE
BOARD OF IMMIGRATION APPEALS

OPINION

Before: GILMAN and WHITE, Circuit Judges; and THAPAR, District Judge.*

RONALD LEE GILMAN, Circuit Judge. This court’s judgment entered on August 2, 2010 was vacated by the Supreme Court on January 10, 2012 and the case remanded for further consideration in light of *Judulang v. Holder*, 132 S. Ct. 476 (2011). The Court in *Judulang* determined that the policy of the Board of Immigration Appeals (BIA) in its application of § 212(c) of the Immigration and Nationality Act to deportation cases was “arbitrary and capricious” under the Administrative Procedure Act, 5 U.S.C. § 706(2)(A).

In the case before us, the BIA denied Musa Abdul Ikharo any consideration of relief under § 212(c) from the immigration judge’s order of deportation. That was due at least in part to the BIA’s now-discredited policy of applying the “comparable-grounds approach” as fully discussed in *Judulang*. The Supreme Court has called on the BIA “to devise another, equally economical policy

*The Honorable Amul R. Thapar, United States District Judge for the Eastern District of Kentucky, sitting by designation.

respecting eligibility for § 212(c) relief, so long as it comports with everything held in both this decision and *St. Cyr.*” *Judulang*, 132 S. Ct. at 490. We therefore remand Ikharo’s case to the BIA for reconsideration in light of *Judulang*.