Matter of Jose Antonio GARCIA, Respondent

Decided March 24, 2023

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

For choice of law purposes, the controlling circuit law in Immigration Court proceedings is the law governing the geographic location of the Immigration Court where venue lies, namely where jurisdiction vests and proceedings commence upon the filing of a charging document, and will only change if an Immigration Judge subsequently grants a change of venue to another Immigration Court. *Matter of R-C-R-*, 28 I&N Dec. 74 (BIA 2020), clarified.

FOR THE RESPONDENT: Robert T. Balaban, Esquire, York, Pennsylvania

FOR THE DEPARTMENT OF HOMELAND SECURITY: Michelle L. Nelsen, Associate Legal Advisor

BEFORE: Board Panel: O'CONNOR, GORMAN, and LIEBMANN, Appellate Immigration Judges.

GORMAN, Appellate Immigration Judge:

In a decision dated January 21, 2021, the Immigration Judge denied the respondent's applications for relief, inter alia for cancellation of removal under section 240A(b)(1) of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1229b(b)(1) (2018).[1] The respondent has appealed from that decision.[2] During the pendency of the appeal, the Board requested supplemental briefing on whether this case is governed by the law of the United States Court of Appeals for the Third or the Fourth Circuit. The Board received a supplemental brief from the Department of Homeland Security ("DHS"). The respondent's appeal will be dismissed.

[1] The respondent has not presented arguments that meaningfully challenge other aspects of the Immigration Judge's decision. Therefore, we deem those issues waived. *See Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012) (recognizing that aspects of the Immigration Judge's decision that are not meaningfully challenged on appeal are deemed waived before the Board).

[2] To eliminate any issues as to potential untimeliness, we take the appeal on certification. We grant the respondent's motion to accept a late-filed brief and have considered the respondent's untimely brief in rendering this decision.

I. PROCEDURAL HISTORY

The respondent is a native and citizen of El Salvador who entered the United States in or about September 2000. On July 17, 2018, DHS issued a notice to appear charging the respondent with removability under section 212(a)(6)(A)(i) of the INA, 8 U.S.C. § 1182(a)(6)(A)(i) (2018), for being present in the United States without being admitted or paroled. The notice to appear directed the respondent to appear for a hearing before the Immigration Court in Philadelphia, Pennsylvania, where the notice to appear was filed.

Notices of hearing dated July 30, 2018, August 22, 2018, and January 30, 2019, instructed the respondent to appear for hearings at the Philadelphia Immigration Court. On August 22, 2018, and January 30, 2019, the respondent physically appeared at the Philadelphia Immigration Court. Subsequently, DHS filed a motion to change venue to the Immigration Court in York, Pennsylvania. In support of its motion to change venue, DHS filed a Form I-830, Notice to EOIR: Alien Address, reflecting that the respondent was newly detained at the York County Prison in York, Pennsylvania.[3] An Immigration Judge granted DHS' motion to change venue, and notices of hearing dated November 16, 2020, and November 24, 2020, instructed the respondent to appear before the York Immigration Court. The respondent physically appeared at the York Immigration Court on November 24, 2020, and January 21, 2021. The Immigration Judges that presided over the entirety of the respondent's proceedings, prior to his final hearing, sat in either the Philadelphia or York Immigration Courts.

All of the respondent's documentary submissions were submitted before the Philadelphia or York Immigration Courts. At the start of the respondent's merits hearing, the Immigration Judge stated on the record that she was conducting a merits hearing for the York Immigration Court via teleconference, appearing from her physical location in Falls Church, Virginia, at the Falls Church Immigration Adjudication Center. The Immigration Judge's oral decision and summary order both contain the heading of the York Immigration Court and are supported by an addendum of law citing to law from the Third Circuit. The Immigration Judge also stated in her oral decision that the hearing was completed via televideo in Pennsylvania.

[3] DHS files a Form I-830 with the Executive Office for Immigration Review ("EOIR") to inform it of a change in a detained respondent's physical location.

II. ANALYSIS

A. Choice of Law

1. Legal and Procedural Framework

This case presents the question of whether these Immigration Court proceedings arise within the jurisdiction of the Third or the Fourth Circuit. We, as well as Immigration Judges, are bound to follow the precedent of this Board, the Attorney General, and the circuit court of appeals with jurisdiction over the geographic region where a case occurs. *Matter of U. Singh*, 25 I&N Dec. 670, 672 (BIA 2012) ("We apply the law of the circuit in cases arising in that jurisdiction . . . ."); *Matter of Anselmo*, 20 I&N Dec. 25, 32 (BIA 1989) (explaining that the decision of a circuit court of appeals must be followed in proceedings arising within that jurisdiction). As the jurisdiction of all but one of the circuit courts of appeals is classified by geography, we must determine where a case arises in order to identify the circuit court of appeals with jurisdiction over that location. *See* 28 U.S.C. § 41 (2018) (listing the composition of the thirteen judicial circuits); *Herrera-Alcala v. Garland*, 39 F.4th 233, 241 (4th Cir. 2022) ("In our federal system, judicial circuits are defined by geography.").

The growth of the Immigration Court system and the advancements of its technological platforms provide for numerous appearance permutations by the participants at a hearing. Where the parties and the Immigration Judges appear from the same location, choice of law determinations are generally straightforward. However, where parties and/or Immigration Judges appear from different locations, including those within different judicial circuits, adjudicators are then tasked with the increasingly more difficult question of which circuit court's law applies. To better understand how the structure of the Immigration Court system affects this choice of law analysis, it is helpful to provide background information on the administrative and procedural factors affecting Immigration Court proceedings.

In recent years, the Immigration Court system has expanded to encompass approximately 68 courts, three immigration adjudication centers, and hundreds of Immigration Judges. The Office of the Chief Immigration Judge ("OCIJ") oversees the Immigration Court system and has taken steps to address the numerous and evolving factors impacting Immigration Court proceedings, including unexpected global phenomena such as the COVID-19 pandemic. One such step is the use of remote hearings held via video or telephone conference, which is authorized by section 240(b)(2) of the INA, 8 U.S.C. § 1229a(b)(2) (2018). *See* Immigration Court Practice Manual, § 4.6 (Nov. 14, 2022).

During the COVID-19 pandemic, OCIJ began to routinely hold internet-based hearings with all Immigration Courts being able to conduct such hearings.[4] Remote hearings allow for multiple configurations of appearances by the parties. As examples, Immigration Judges may appear in court where one or both parties appear from a remote location, one or both parties may appear in court where the Immigration Judge appears remotely, or both parties, and the Immigration Judge, may appear remotely from separate physical locations. *See* Executive Office for Immigration Review, Operational Status, https://www.justice.gov/eoir-operational-status ("For internet-based hearings, practitioners and respondents do not need to be physically present in the same location."). In addition, the physical locations of the Immigration Judge and the parties can, and do, change from hearing to hearing. *See, e.g.*, *Thiam v. Holder*, 677 F.3d 299, 300–01 (6th Cir. 2012) (the respondent was physically present in Ohio and Virginia for appearances before an Immigration Judge who was physically present in Virginia); *Yang You Lee v. Lynch*, 791 F.3d 1261, 1262–63 (10th Cir. 2015) (the respondent was physically present in Oklahoma and Texas for appearances before an Immigration Judge who was physically present in Texas).

Immigration Court procedures also involve the use of administrative control courts, defined in the regulations as a court "that creates and maintains Records of Proceedings for Immigration Courts within an assigned geographical area." 8 C.F.R. § 1003.11 (2022). The regulations direct that "[a]ll documents and correspondence pertaining to a Record of Proceeding shall be filed with the Immigration Court having administrative control over that Record of Proceeding and shall not be filed with any other Immigration Court." *Id.*; *see also* Executive Office for Immigration Review, Administrative Control List (Dec. 14, 2022), https://www.justice.gov/eoir/immigration-court-administrative-control-list ("The following courts may have jurisdiction over charging documents issued by the following [DHS] District Offices or Sub-offices; or charging documents relating to individual aliens in custody at the following detention facilities service processing centers; or incarcerated alien inmates in the custody of departments of corrections as specified."). These administrative control courts have varying levels of involvement with their respective geographic assignments and are subject to change. In addition, certain administrative control courts are

[4] Internet-based hearings are hearings held over internet-based platforms such as Webex and OpenVoice. They support video and telephone conferences and are distinct from the closed video teleconference systems also used by OCIJ. As technology has evolved, the platforms that support video and telephone conferencing have grown in number. Although these platforms may be technologically distinct, we will treat them the same in addressing the choice of law issue as they all support the remote conferencing capabilities authorized in section 240(b)(2) of the INA, 8 U.S.C. § 1229a(b)(2).

located within different judicial circuits than their assigned televideo or detention centers.

In addition, OCIJ operates three immigration adjudication centers where Immigration Judges preside remotely over hearings in different Immigration Courts throughout the United States. OCIJ has further implemented procedures to minimize the number of unused courtrooms at the various Immigration Courts such that Immigration Judges may on occasion hear cases from other courts, either in-person at a nearby court or by video teleconferencing.

When considering this landscape, the practical implications present in the choice of law analysis become even more evident. As illustrated above, Immigration Court procedures provide for circumstances where the parties may appear, from the inception to the conclusion of proceedings, within the geographical jurisdiction of one circuit court of appeals and the sole connection to a different circuit court of appeals would be limited to an Immigration Judge's physical presence on the day of the final hearing.[5] Such circumstances provide for the possibility that a different circuit's law will apply in a petition for review of proceedings that the parties, the Immigration Judge, and this Board believed were governed by another circuit's law. These scenarios upset settled expectations and can raise questions about the fairness of proceedings. *See Mellouli v. Lynch*, 575 U.S. 798, 806 (2015) (acknowledging the benefits of an approach that "promote[s] efficiency, fairness, and predictability in the administration of immigration law."); *Thiam*, 677 F.3d at 302 ("Thiam also makes a strong policy argument that an applicant should be able to avail herself of all of her due process rights, including appearing in person before an IJ, without fear of deleterious side effects like a change in the circuit law applied."). Thus, the fluid nature of the administrative and procedural factors involved in the Immigration Court

[5] The facts of the instant case provide a useful example of this difficulty. As indicated above, the hearing notice for the respondent's final hearing was issued from the York Immigration Court, directed the respondent to appear at the York Immigration Court, and instructed that any motions or documents should be filed at the York Immigration Court. On November 24, 2020, the last hearing prior to the merits hearing, the presiding Immigration Judge stated that the hearing was being conducted at the York Immigration Court and that he was scheduling the respondent's merits hearing for January 21, 2021. The respondent's counsel further filed documentary submissions, dated 6 and 16 days prior to the final merits hearing, to the direction of the York Immigration Court. The record does not appear to indicate, until the start of the respondent's final merits hearing, that an Immigration Judge who is physically located at the Falls Church Immigration Adjudication Center, in Falls Church, Virginia, would be presiding over the hearings. Rather, that Immigration Judge stated at the beginning of the final hearing that she had not previously presided over the case and that because of this she had familiarized herself with the record of proceedings.

system calls for the creation of a uniform rule that will provide transparency and predictability in the choice of law analysis.

As previously noted, we are bound to follow the law of the circuit court of appeals with jurisdiction over the region where an Immigration Court is located. *See Abdulai v. Ashcroft*, 239 F.3d 542, 553 (3d Cir. 2001) ("The BIA is required to follow court of appeals precedent within the geographical confines of the relevant circuit."). In making this determination, we have looked to the location where the underlying proceedings occurred. *See, e.g.*, *Matter of Chavez*, 24 I&N Dec. 272, 273–74 (BIA 2007) (holding that Sixth Circuit precedent is not binding because the underlying proceedings occurred in the Chicago Immigration Court, within the Seventh Circuit); *Matter of Santos-Lopez*, 23 I&N Dec. 419, 419–20 (BIA 2002) (en banc) (applying Fifth Circuit law where the underlying proceedings occurred in the Houston Immigration Court), *superseded by Lopez v. Gonzalez*, 549 U.S. 47 (2006). Given that the parties may appear from multiple and differing locations, we are tasked with deciding how to determine where the proceedings occurred even in such technologically advanced circumstances.

Previously, in *Matter of R-C-R-*, 28 I&N Dec. 74, 75 n.1 (BIA 2020), we held that "[t]he circuit law applied to proceedings conducted via video conference is the law governing the docketed hearing location, as opposed to the location of the administrative control court." *See also Matter of Nchifor*, 28 I&N Dec. 585, 585 n.1 (BIA 2022) (citing to *Matter of R-C-R-* and holding that Fifth Circuit law applied where the respondent was located, and the hearing was docketed, in Louisiana). In *Matter of R-C-R-*, the respondent was located, and the case was docketed, in Richwood, Louisiana, while the Immigration Judge conducted the hearing remotely from the administrative control court in Batavia, New York. 28 I&N Dec. at 74 n.1. Therefore, we applied the law of the Fifth Circuit in considering the respondent's appeal. However, we did not further define the term "docketed hearing location." *Id.*

In considering where the underlying proceedings occurred, we have also considered the circuit courts' discussions of the "Venue and forms" provision at section 242(b)(2) of the INA, 8 U.S.C. § 1252(b)(2) (2018), directing that "[t]he petition for review shall be filed with the court of appeals for the judicial circuit in which the Immigration Judge completed the proceedings." Section 242(b)(2) of the INA is a judicial review provision that the circuit courts interpret to determine whether venue is proper in their court or whether transfer is warranted.[6] Specifically, this provision directs where a petition

[6] In addressing this question, the circuit courts have employed a range of analytical frameworks, emphasizing different factors and arriving at conflicting results. The Seventh Circuit has concluded that "[v]enue is determined by the location of the immigration court rather than the . . . location from which witnesses appear via teleconference." *Chavez-Vasquez v. Mukasey*, 548 F.3d 1115, 1118 n.1 (7th Cir. 2008) (citing *Ramos v.*

for review shall be filed at the completion of proceedings before EOIR. In contrast, our choice of law analysis identifies what circuit law controls during Immigration Court proceedings.[7]

Although the issue of a circuit court's venue is solely subject to that court's purview, our choice of law analysis in Immigration Courts is greatly impacted by our future-oriented consideration of this circuit court determination. First, as noted, we, as well as Immigration Judges, are bound to follow the precedent of the circuit court of appeals with jurisdiction over the region where a case arises. Second, the parties have a reasonable expectation that the same circuit law that governed their immigration proceedings will also govern the judicial review of those proceedings.[8]

Ashcroft, 371 F.3d 948, 949 (7th Cir. 2004)). The Ninth Circuit has examined multiple factors in determining venue, including the granting of a change of venue, the respondent's physical location, and the docketed hearing location on the final hearing notices. *Sauceda v. Garland*, 23 F.4th 824, 831–32 (9th Cir. 2022). The Eighth Circuit has applied Eighth Circuit law where the docketed hearing location was within the Eighth Circuit but the respondent appeared from a physical location within the jurisdiction of a different circuit court of appeals. *Adongafac v. Garland*, 53 F.4th 1114, 1116–17 (8th Cir. 2022). The Tenth Circuit has held that the Immigration Judge's physical location, and the fact that proceedings were conducted via video conference, do not change the applicable circuit law. *Medina-Rosales v. Holder*, 778 F.3d 1140, 1143 (10th Cir. 2015). However, the Tenth Circuit concluded that venue was properly in the Fifth Circuit where, although the final hearing was docketed in Oklahoma City (within the Tenth Circuit), the Immigration Judge and the respondent were present in Texas for the final hearing, remote conferencing was not used, and the notice to appear ordered the respondent to appear in Texas. *Yang You Lee*, 791 F.3d at 1264–66.

[7] While we are bound to follow the law of the circuit court of appeals in which a case arises, circuit courts have determined that section 242(b)(2) of the INA, 8 U.S.C. § 1252(b)(2), is a non-jurisdictional venue provision such that they have the discretion to consider petitions for review arising from this Board even where venue lies elsewhere. Ten circuit courts have unanimously come to this conclusion. *See Bibiano v. Lynch*, 834 F.3d 966, 969 (9th Cir. 2016); *Yang You Lee*, 791 F.3d at 1263–64; *Thiam*, 677 F.3d at 301–02; *Sorcia v. Holder*, 643 F.3d 117, 121 (4th Cir. 2011); *Avila v. U.S. Att'y Gen.*, 560 F.3d 1281, 1284–85 (11th Cir. 2009) (per curiam); *Khouzam v. Att'y Gen.*, 549 F.3d 235, 249 (3d Cir. 2008); *Moreno-Bravo v. Gonzales*, 463 F.3d 253, 262 (2d Cir. 2006); *Jama v. Gonzales*, 431 F.3d 230, 233 (5th Cir. 2005) (per curiam); *Georcely v. Ashcroft*, 375 F.3d 45, 49 (1st Cir. 2004); *Nwaokolo v. INS*, 314 F.3d 303, 306 n.2 (7th Cir. 2002) (per curiam).

[8] In addressing petitions for review of this Board's decisions, the circuit courts have applied the law of their particular circuit. *See, e.g.*, *Yang You Lee*, 791 F.3d at 1266–67 (transferring the petition for review to the Fifth Circuit for multiple reasons, including that the petitioner's argument on the central issue turned on Fifth Circuit law); *Sorcia*, 643 F.3d at 123–24 (declining to transfer the petition for review to the Eleventh Circuit due, in part, to the same legal proposition being applicable in both the Fourth and Eleventh Circuits); *Llapa-Sinchi v. Mukasey*, 520 F.3d 897, 901 (8th Cir. 2008) ("[W]e conclude we are not bound by Ninth Circuit case law interpreting BIA regulations."); *Rosendo-Ramirez v. INS*, 32 F.3d 1085, 1091 (7th Cir. 1994) ("Both the Immigration Judge . . . and the BIA decided

Therefore, the same circuit law that will be used to resolve a future petition for review should also be applied in the underlying proceedings so that adjudicators may consider the relevant issues, and the parties may present arguments, pursuant to the law that will ultimately control at the circuit court level.

For this reason, we have considered the circuit courts' decisions addressing section 242(b)(2) of the INA, 8 U.S.C. § 1252(b)(2), in an attempt to reconcile the circuit law that will control if a petition for review is filed. In the instant case, the choice of law question arises between the Third and Fourth Circuits, and both courts have addressed section 242(b)(2) of the INA, 8 U.S.C. § 1252(b)(2), in published decisions. In *Luziga v. Att'y Gen.*, 937 F.3d 244, 250 (3d Cir. 2019), the Third Circuit determined that venue was appropriate in the Third Circuit where an Immigration Judge who was physically located in Virginia presided over proceedings in Pennsylvania.

On the other hand, in *Herrera-Alcala*, 39 F.4th at 241, the Fourth Circuit held that venue was proper in its circuit where the respondent appeared from a facility in Louisiana and the Immigration Judge appeared via videoconferencing from an immigration adjudication center in Virginia. The court interpreted section 242(b)(2) of the INA, 8 U.S.C. § 1252(b)(2), to mean that the location where the Immigration Judge was physically located when he or she completed the proceeding determines the judicial circuit where the petition for review should be filed. *Herrera-Alcala*, 39 F.4th at 243 ("The statute asks where the 'Immigration Judge completed the proceedings.'"). The Fourth Circuit explained that, as the Immigration Judge sat in Virginia, "whatever action the Immigration Judge took to 'complete[ ] the proceedings' must have occurred in the Fourth Circuit." *Id.* at 241. *See also Sorcia v. Holder*, 643 F.3d at 123 (determining venue upon viewing multiple facts as a composite and concluding that venue was proper in the Eleventh Circuit when the Immigration Judge sat in, and issued an oral decision from, Georgia).

After the decisions in the Third and Fourth Circuits, the Second Circuit addressed this issue in *Sarr v. Garland*, 50 F.4th 326, 331–34 (2d Cir. 2022). The court concluded that the meaning of "completed" in section 242(b)(2) of the INA, 8 U.S.C. § 1252(b)(2), is ambiguous in the context of a hearing held via video teleconference and examined the federal regulations addressing jurisdiction and venue. *Id.* at 332. The court specifically looked to 8 C.F.R. § 1003.14(a) (2022), which states that "[j]urisdiction vests, and proceedings before an Immigration Judge commence, when a charging document is filed with the Immigration Court by [DHS]." As the charging document in that case identified Jena, Louisiana, as the address of the Immigration Court

Rosendo's case in accordance with Fifth Circuit law; but since the petition for review has come before this circuit, we review the BIA decision according to Seventh Circuit law.").

where proceedings commenced, the Second Circuit concluded that jurisdiction vested in Louisiana, and nothing occurred after the commencement of proceedings to suggest that venue was moved.

The court further highlighted the Immigration Courts' venue regulations, emphasizing that "an 'Immigration Judge, for good cause, may change venue *only* upon motion by one of the parties, after the charging document has been filed with the Immigration Court.'" *Sarr*, 50 F.4th at 332 (quoting 8 C.F.R. § 1003.20 (2022)) (emphasis in original). In light of this analysis, the Second Circuit held that "an [Immigration Judge] 'completes' proceedings and, thus, venue lies in the location where — absent evidence of a change of venue — proceedings commenced . . . ." *Id.* The court observed that "[a]n [Immigration Judge] who is *not* physically present in a location can undertake a variety of actions that 'complete' a proceeding (by conducting a VTC hearing pursuant to the law of the circuit on the charging document, for instance)." *Id.* at 333.

We find the Second Circuit's discussion of our regulatory authority persuasive. In determining where the underlying Immigration Court proceedings occurred, we are also directed to our agency's regulations addressing an Immigration Court's venue. *See Matter of Ponce de Leon*, 21 I&N Dec. 154, 158 (BIA 1996) ("The Board is bound to uphold agency regulations."). The regulations state that "[v]enue shall lie at the Immigration Court where jurisdiction vests pursuant to § 1003.14." 8 C.F.R. § 1003.20(a). In turn, 8 C.F.R. § 1003.14(a) states that "[j]urisdiction vests, and proceedings before an Immigration Judge commence, when a charging document is filed with the Immigration Court by [DHS]." The regulations further instruct that an Immigration Judge "may change venue only upon motion by one of the parties, after the charging document has been filed with the Immigration Court." 8 C.F.R. § 1003.20(b).

Finally, as previously noted, we requested supplemental briefing from the parties as to this choice of law question.[9] In response, DHS argues that the Board should apply the law of the Third Circuit to the instant proceedings. In support of its position, DHS asserts that the applicable circuit law is determined by venue. DHS further contends that section 242(b)(2) of the INA, 8 U.S.C. § 1252(b)(2), is reasonably interpreted to provide that an Immigration Judge "completed the proceedings" at the location where the proceedings commenced or the location of the Immigration Court to which venue was changed. DHS finds support for its position in the history of the INA's revisions. Specifically, it highlights that Congress provided authorization for video and teleconference proceedings under section 240(b)(2) of the INA, 8 U.S.C. § 1229a(b)(2), at the same time it amended the venue provision at section 242(b)(2) of the INA, 8 U.S.C. § 1252(b)(2).

[9] The respondent did not respond to our supplemental briefing request.

See Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Division C of Pub. L. 104-208, 110 Stat. 3009-546, 3009-589, 3009-608. Therefore, DHS argues that Third Circuit law controls in the instant proceedings because these proceedings commenced at the Philadelphia Immigration Court and venue was later changed to the York Immigration Court through the grant of a motion to change venue.

2. Holding

In consideration of the foregoing framework, we conclude that a rule providing consistency and transparency in the choice of law analysis is one that arises out of our regulatory authority addressing venue.[10] We have also considered that our rule must acknowledge, and better respond to, the technological advancements in Immigration Court that allow for what is essentially a deconstructed courtroom where the judge, parties, witnesses, and interpreters may all appear from separate physical locations that can, and do, change upon each hearing, and could even include their respective homes or offices.[11] Our rule must further consider the existence of immigration adjudication centers where technology allows Immigration Judges to remotely preside over hearings across the United States even though the centers do not themselves accept filings. To tie the controlling circuit law solely to the Immigration Judge's physical location at the final hearing could negate the jurisdiction of the circuit law that was controlling in prior hearings and significantly impact the parties' ability to prepare legal arguments pursuant to the applicable circuit law. This is particularly true where an Immigration Judge located in a different judicial circuit is assigned to a case a few days before, or the day of, a merits hearing, as was done in this case. Our holding will allow for the identification of the applicable circuit law

[10] In contrast, section 242(b)(2) of the INA, 8 U.S.C. § 1252(b)(2), is a judicial review provision that is subject to interpretation by the circuit courts. We have no role, nor are we afforded any deference, in interpreting that statute. However, we do consider this provision, and the circuit court decisions addressing it, germane to our holding to the extent that the parties that appear before EOIR have a reasonable expectation that the same circuit law that governed their immigration proceedings will also govern the judicial review of those proceedings. To the extent that section 242(b)(2) of the INA, 8 U.S.C. § 1252(b)(2), raises these expectation issues, we consider it relevant to our decision, and we strive to issue a rule that is consistent with those expectations. However, we also acknowledge that we have no role in determining in which circuit court a petition for review is properly filed.

[11] The technology used in Immigration Court hearings allows for Immigration Judges to appear from a wide variety of locations that are not located within physical courtrooms. Thus, an Immigration Judge's presence at a hearing does not necessarily equate to his or her presence in a courtroom or an Immigration Court.

throughout the entirety of the proceedings, providing for consistency and transparency, even within the evolving courtroom paradigm.

Turning to our regulations, when read together they instruct that venue lies at the Immigration Court where jurisdiction vests and proceedings before an Immigration Judge commence, and that only after the charging document has been filed with the Immigration Court may venue be changed. 8 C.F.R. §§ 1003.14(a), 1003.20. Accordingly, we hold that the controlling circuit law in Immigration Court proceedings for choice of law purposes is the law governing the geographic location of the Immigration Court where venue lies, namely where jurisdiction vests and proceedings commence upon the filing of a charging document, and will only change if an Immigration Judge subsequently grants a change of venue to another Immigration Court. 8 C.F.R. §§ 1003.14(a), 1003.20(a). Consequently, jurisdiction presumptively vests at the Immigration Court where the charging document is filed. Generally, this will be the same Immigration Court that is listed on the charging document.[12] This circuit law controls regardless of where the parties and the Immigration Judge are physically located during the hearings.[13] Further, the controlling circuit law may only be changed where an Immigration Judge grants a motion to change venue.[14] *See* 8 C.F.R. § 1003.20(b) ("The Immigration Judge, for good cause, may change venue

[12] As written, the regulations anticipate that proceedings will commence, and the charging document will be filed, at the same Immigration Court. While this occurs in many proceedings, due to the administrative realities of Immigration Court practice, and the volume of cases before the Immigration Courts, this does not always happen in practice. Where a discrepancy between these locations exists, the Immigration Court identified on the charging document will generally be the court where jurisdiction vests and proceedings commence. However, if the parties believe that there are other factors that the Immigration Judge should consider in the choice of law analysis, they should raise any arguments or objections on this issue to the Immigration Judge. When adjudicating this issue, it is important to note that the regulations direct that venue lies at an Immigration Court, as opposed to a location where parties may be directed to appear that is not a court, as is the case for certain detention and televideo centers. *See* 8 C.F.R. § 1003.20(a) ("Venue shall lie at *the Immigration Court* where jurisdiction vests . . . .") (emphasis added); *see also* 8 C.F.R. § 1239.1(a) ("Every removal proceeding conducted under section 240 of the Act (8 U.S.C. 1229a) to determine the deportability or inadmissibility of an alien is commenced by the filing of a notice to appear with *the immigration court*.") (emphasis added).

[13] Where, after the issuance of the charging document but prior to its filing with an Immigration Court, DHS issues a Form I-831 directing the respondent to appear at a different location than the court listed on the charging document, the new location identified on the Form I-831 will generally be the court where venue lies.

[14] The filing of a Form I-830 in itself is not sufficient to effect a change of venue request. DHS must file a motion to change venue before the Immigration Judge.

only upon motion by one of the parties, *after* the charging document has been filed with the Immigration Court.") (emphases added).[15]

Our holding must also weigh the regulatory description of administrative control courts and the varied roles they play in Immigration Court proceedings.[16] 8 C.F.R. § 1003.11 (2022) states that "[a]n administrative control Immigration Court is one that creates and maintains Records of Proceedings for Immigration Courts within an assigned geographical area." The regulations further specify that "*[a]dministrative control* means custodial responsibility for the Record of Proceeding as specified in § 1003.11." 8 C.F.R. § 1003.13 (2022) (emphasis in original). We do not read this language to support a conclusion that venue necessarily lies at an administrative control court solely because a charging document is filed there. Rather, as described above and reflected in practice, an administrative control court may solely maintain, and have custodial responsibility for, the record of proceedings, as opposed to being the court where proceedings are commenced pursuant to 8 C.F.R. § 1003.14(a). *See generally Sarr*, 50 F.4th at 332 (explaining that the administrative control courts physically located in New York "did not wrest venue from Louisiana. Rather, they merely 'serviced' the Louisiana proceeding."). Therefore, where a charging document is filed at an administrative control court, the Immigration Judge should consider any arguments from the parties and make a finding

[15] Our holding is similar to EOIR's 2007 proposed regulation that "[v]enue lies at the designated place for the hearing as identified . . . on the charging document. If the charging document does not identify the place of the hearing, venue shall lie at the place of the hearing identified on the initial hearing notice." Jurisdiction and Venue in Removal Proceedings, 72 Fed. Reg. 14494, 14497 (proposed Mar. 28, 2007). However, as opposed to the "place for the hearing," our instant holding, consistent with the existing regulatory language, ties venue to the location of the Immigration Court where jurisdiction vests and proceedings commence.

[16] As examples, in one proceeding, an administrative control court may be the filing location for documentary submissions and the physical location of the Immigration Judge. *See generally Sarr*, 50 F.4th at 331–32 (explaining that the Immigration Judge physically sat in New York and the filing locations for correspondence were two administrative control courts in New York). However, in a different proceeding, the administrative control court may be the filing location for documentary submissions while the Immigration Judge appears from a separate physical location. *See generally Herrera-Alcala*, 39 F.4th at 240–42 (explaining that the Immigration Judge was physically located in Virginia, the respondent was physically located in Louisiana, and the administrative control court was in Minnesota). Further, assigned administrative control courts can, and do, change over time. *See* Executive Office for Immigration Review, Administrative Control List, https://www.justice.gov/eoir/immigration-court-administrative-control-list (describing other hearing locations assigned to administrative control courts as "[d]etail cities or other hearing sites which may be serviced by the administrative control court.").

identifying the Immigration Court where jurisdiction vested. *See* 8 C.F.R. §§ 1003.14(a), 1003.20(a).[17]

For these reasons, we now clarify our decision in *Matter of R-C-R-*, 28 I&N Dec. at 74 n.1, to hold that the controlling circuit law in Immigration Court proceedings is the law governing the geographic location of the Immigration Court where jurisdiction vests and proceedings commence or the location of the Immigration Court to which an Immigration Judge has granted a change of venue. In the limited circumstances where there is conflicting or missing information in the record regarding where venue lies that is not resolved by the foregoing discussion, the parties should raise any arguments or objections that they may have on this issue before the Immigration Judge.

It is further incumbent on the parties to carefully consider and raise these venue and choice of law issues before Immigration Judges when filing, or responding to, a motion to change venue. Immigration Judges should also consider the impact a pending motion to change venue may have on the applicable circuit law and request that the parties address this issue where necessary. *See* 8 C.F.R. § 1003.20(b) ("The Immigration Judge may grant a change of venue only after the other party has been given notice and an opportunity to respond to the motion to change venue."). Additionally, as a matter of best practice, Immigration Judges should clearly identify on the record at the start of each merits hearing what circuit law applies and where the Immigration Judge and the parties are physically located. Finally, the analysis and identification of the applicable circuit law should be included in an Immigration Judge's final decision.

In the instant proceedings, the notice to appear directs the respondent to appear, and was filed, at the Philadelphia Immigration Court, within the Third Circuit. Subsequently, the Immigration Judge granted a motion to change venue to York, Pennsylvania, also within the Third Circuit. Therefore, the proceedings in this case fall under the jurisdiction of the Third Circuit.

[17] To the extent that there are proceedings where the charging document does not include an address for the Immigration Court, or where the charging document directs the respondent to appear at a location where an Immigration Court does not exist, we continue to hold that for choice of law purposes venue lies at the Immigration Court where jurisdiction vests and proceedings commence. If this situation arises, the parties may present arguments and the Immigration Judge should determine at which Immigration Court jurisdiction vested. In light of the Supreme Court's decision in *Niz-Chavez v. Garland*, 141 S. Ct. 1474 (2021), circumstances where the charging document does not identify an Immigration Court should appear much less frequently.

B. Cancellation of Removal

Turning to the merits of the respondent's appeal, the respondent argues that the Immigration Judge erred in denying his application for cancellation of removal. Specifically, he contends that his United States citizen son, who was 16 years old at the time of his merits hearing, will experience exceptional and extremely unusual hardship upon the respondent's removal.

We affirm the Immigration Judge's determination that the respondent did not establish the requisite level of hardship to his qualifying relative. Exceptional and extremely unusual hardship for cancellation of removal is based on a consideration of all hardship factors cumulatively. *See Matter of J-J-G-*, 27 I&N Dec. 808, 811 (BIA 2020) ("The exceptional and extremely unusual hardship for cancellation of removal is based on a cumulative consideration of all hardship factors . . . ."). To satisfy this standard, the respondent must demonstrate that his qualifying relative would suffer hardship that is "substantially different from, or beyond, that which would normally be expected from the deportation of an alien with close family members here." *Matter of Monreal*, 23 I&N Dec. 56, 65 (BIA 2001); *see also Pareja v. Att'y Gen.*, 615 F.3d 180, 194–95 (3d Cir. 2010) (deferring to the Board's interpretation of the "exceptional and extremely unusual hardship standard" as "a permissible construction of the statute") (quoting *Chevron, U.S.A, Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 843 (1984)). Hardship is not measured in a vacuum, but "must necessarily be assessed, at least in part, by comparing it to the hardship others might face." *Matter of Andazola*, 23 I&N Dec. 319, 323 (BIA 2002).

The respondent and his son expressed concern that the respondent's removal will impact the son's financial ability to go to college, as well as cause emotional hardship. However, as found by the Immigration Judge, the respondent's son will remain living in the United States with his mother, who has Temporary Protected Status. The respondent's son began working at the restaurant where his mother works and, through his wages, helps contribute to the family's income and saves money for college. Moreover, although the respondent's son testified that his grades have suffered while the respondent has been detained, we agree with the Immigration Judge's determination that the son's diminished grades, in conjunction with the other hardship factors, are insufficient to constitute exceptional and extremely unusual hardship. Furthermore, the respondent has not established that his removal will result in emotional harm greater than that which is normally experienced by individuals who have family members removed from the United States.

The respondent argues on appeal that the Immigration Judge failed to consider that his partner would be forced to find additional employment upon his removal, which could lead to health problems. The Immigration Judge

weighed the testimony that the respondent's partner is older and is experiencing some difficulties, and considered the impact her hardship might have on the respondent's son. The Immigration Judge reasonably concluded that the record is insufficient to establish that the respondent's partner is unwell or unable to continue to work.

The respondent also argues that the Immigration Judge did not consider his concern for his son's safety and welfare or his son's emotional and psychological trauma, educational needs, financial hardship, and physical needs. However, the respondent has not further specified what his concerns are or what aspects of his son's issues the Immigration Judge did not consider. The Immigration Judge's decision discusses the respondent's son's academic, financial, transportation, and emotional concerns. The respondent has not established that these factors would cumulatively amount to hardship that is substantially beyond the hardship typically resulting from a family member's removal.

Accordingly, we affirm the Immigration Judge's determination that the respondent has not established that his son would experience hardship that rises to the level of exceptional and extremely unusual. Therefore, the respondent did not establish eligibility for cancellation of removal under section 240A(b)(1) of the INA, 8 U.S.C. § 1229b(b)(1).

III. CONCLUSION

The circuit law that applies in Immigration Court proceedings is the law governing the geographic location of the Immigration Court where jurisdiction vests and proceedings commence. This circuit law controls regardless of where the parties and the Immigration Judge are physically located and may only change where an Immigration Judge grants a motion to change venue.

As the respondent's charging document was filed with, and directed the respondent to appear at, the Immigration Court in Philadelphia, Pennsylvania, and venue was subsequently changed through the granting of a motion to change venue to an Immigration Court in York, Pennsylvania, Third Circuit law applies to the instant proceedings. The respondent has not established his eligibility for cancellation of removal, and his appeal will be dismissed.

Accordingly, the following order will be entered.

ORDER: The appeal is dismissed.