

FILED

August 25, 2006

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

Charles R. Fulbruge III
Clerk

No. 05-60119

AMIN MEMANJI MOMIN,

Petitioner,

versus

ALBERTO R. GONZALES, U.S. ATTORNEY GENERAL,

Respondent.

Appeal from the Board of Immigration Appeals
(No. A78-562-049)

Before REAVLEY, CLEMENT, and PRADO, Circuit Judges.

EDITH BROWN CLEMENT, Circuit Judge:

In this petition for panel rehearing, the Petitioner, Amin Memanji Momin, contends that this court should reconsider its previous decision, *Momin v. Gonzales*, 447 F.3d 447 (5th Cir. 2006), in light of the repeal of the regulations on which the decision was premised. The new federal regulations apply to “all cases pending administrative or judicial review on or after May 12, 2006.” Eligibility of Arriving Aliens in Removal Proceedings, 71 Fed. Reg. 27,585, 27,588 (May 12, 1996); *see*

Mouelle v. Gonzales, 416 F.3d 923 (8th Cir. 2005), *cert. granted and judgment vacated*, 126 S. Ct. 2964 (2006) (remanding to the Eighth Circuit for further consideration in light of the new regulations).

On May 12, 2006, the mandate had not issued. Both the Petitioner and the Respondent ask this court to grant the petition for rehearing, vacate our opinion, and remand the case to the Board of Immigration Appeals (“BIA”) for further proceedings under the new regulations. We agree with their position.

Accordingly, we GRANT the petition for rehearing, VACATE our previous opinion, 447 F.3d 447, and REMAND the case to the BIA for further proceedings under the new regulations.