IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 92-4461
Summary Calendar

KAREN MAGRETHE FRIS, THOMAS FRIS
& BENEDICTE FRIS,

Petitioners,

versus

IMMIGRATION AND NATURALIZATION
SERVICE,

Respondent.

Petition for Review of an Order of the
Immigration and Naturalization Service
(A28 652 624, A71 515 557 & A71 515 558)

(December 17, 1992)

Before JOLLY, DUHÉ, and BARKSDALE, Circuit Judges.

PER CURIAM:*

Benedicte Fris, Karen Fris, and Thomas Fris petition for review of an order of the Board of Immigration Appeals dismissing their appeal seeking suspension of deportation after an immigration judge found them deportable as overstays pursuant to section 241(a)(1)(B) of the Immigration and Nationality Act, 8 U.S.C.

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*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the court has determined that this opinion should not be published.

§ 1251(a)(1)(B) and denied their application for suspension of deportation pursuant to section 244 of the Act, 8 U.S.C. § 1254(a). Because we conclude that the Board's decision was correct, we grant review and affirm.

I

The appellants in this case are blood relatives of one another: Karen, age 78, is the mother of Benedicte, age 45, who is in turn the mother of Thomas, age 20. They have lived together as a family unit in the United States since arriving here in April 1982 on nonimmigrant visitor visas, which authorized them to remain here for a period of three months. The group had travelled to the United States in 1979 on tourist visas, visiting Karen's brother, who is a United States citizen.

After returning to Denmark, the appellants decided they wanted to permanently reside in the United States; they sold Karen's house in Denmark and shipped their personal belongings to the United States. The Frises then returned to the United States in April 1982 on nonimmigrant visitor visas, authorized to remain for three months. After their immigration, Benedicte worked at her uncle's restaurant until it closed, subsequently was employed at another restaurant, and most recently has been working as a babysitter to earn income.[1] Karen and Thomas are not employed, but Karen

[1]Benedicte testified that she earns between $100 and $140 per week babysitting. The family is able to survive without the help of public assistance programs primarily because they do not currently make rental payments for the use of their residence;

receives a pension of $600 to $900 per month (depending upon the exchange rate) from Denmark for her years of employment as a physical therapist. Thomas entered elementary school when the family arrived in the United States in 1982, and has since graduated from an American high school. While Karen and Benedicte speak, read, and write Danish, Thomas speaks the language but cannot read or write it.[2]

On June 14, 1991, apparently after the Frises had "turned themselves in" to the Immigration and Naturalization Service, they were served with orders to show cause alleging their deportability as overstays. On July 15 and November 12, 1991, the respondents appeared with counsel at their deportation hearing, conceded their deportability as charged, and presented evidence in support of their application for suspension of deportation.

The immigration judge denied the appellants' application for suspension of deportation after finding no evidence of "extreme hardship" as is required under the governing statute. He noted that the Frises were well educated and in good health, and that they presented no convincing evidence that they would not be able to support themselves in their native country, which has one of the

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they reside in the dwelling free of charge in exchange for doing repair and maintenance work on it. Karen testified, however, that if the family had to leave their present residence and live in one requiring rental payments, then Thomas could get a job and help support the family.

[2]All three appellants can speak English, and Thomas can read and write in English as well.

world's highest standards of living. The immigration judge went on to state that even if the appellants had been able to prove extreme hardship, he would have nonetheless denied their application as a matter of discretion. He noted that the Frises had entered the United States on nonimmigrant visitor visas with the intention of remaining here permanently, and that Benedicte worked in this country without authorization and only paid income taxes on a portion of the wages she has earned in America. He further noted that Karen may be able to emigrate to this country through her brother, who resides here, and might then be able to petition for her daughter and grandson. He additionally granted the appellants' unopposed request for voluntary departure.

The Frises then appealed the immigration judge's decision to the Board of Immigration Appeals, which dismissed the appeal. The Board concluded that the appellants were deportable, that the immigration judge did not misapply the applicable standards, and that the Frises were not eligible for suspension of deportation because their hardship upon departing the United States would not be "extreme." It granted the Frises' request for voluntary departure within thirty days. The Frises timely filed this petition for review.

II

The statute governing the Frises' request for suspension of deportation, section 244(1) of the Immigration and Nationality Act, 8 U.S.C. § 1254(a), states that the Attorney General may, in his

discretion, suspend deportation of aliens who meet three threshold requirements: (1) physical presence in the United States for a continuous period of not less than seven years preceding the date of the application for suspension of deportation; (2) good moral character; and (3) endurance of extreme hardship if deportation is effected. Even if these criteria are met, the Attorney General still has discretion to refuse to suspend deportation. INS v. Rios-Pineda, 471 U.S. 444, 446, 105 S.Ct. 2098, 2100 (1985).

We review the BIA's findings of the first two criteria, continuous physical presence and good moral character, under the "substantial evidence" test. Hernandez-Cordero v. INS, 819 F.2d 558, 560 (5th Cir. 1987). The BIA's finding as to the third criterion, the existence of extreme hardship, is reviewed under the more limited "abuse of discretion" standard. Zamora-Garcia v. U.S. Dept. of Justice I.N.S., 737 F.2d 488, 490 (5th Cir. 1984). This court has held that "we are entitled to find that the BIA abused its discretion only in a case where the hardship is uniquely extreme, at or closely approaching the outer limits of the most severe hardship the alien could suffer and so severe that any reasonable person would necessarily conclude that the hardship is extreme." Hernandez-Cordero, 819 F.2d at 563.

III

The appellants urge us to find that the Board of Immigration Appeals (BIA) erred in not finding that the immigration judge placed too great an emphasis on certain irrelevant factors of

evidence while not giving sufficient consideration to other appropriate factors in his determination that the Frises would not suffer "extreme hardship" if their application for suspension of deportation were denied.[3] The BIA refused to find that the immigration judge had abused his discretion, and we in turn do not find that the BIA abused its discretion in dismissing the Frises' appeal.

Both the immigration judge and the BIA considered all of the relevant evidence pertaining to hardship in this case, and both determined that it did not prove that hardship to be "extreme."

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[3]The appellants advance two other arguments which are without merit. The first one is that the decision essentially precludes natives of well-developed nations from receiving a suspension of deportation because one factor considered in the suspension decision is the standard of living in the applicant's native country. Consideration of such a factor does not dictate that the immigration judge cannot and does not examine the individual circumstances and hardships of each applicant; the appellants in this case point to nothing in the record that indicates that the immigration judge or the Board of Immigration Appeals viewed this factor in isolation such that it became an "arbitrary bar[] of a category of persons that denies individuals...consideration of their own cases on their own merits." Appellants' Brief, p. 6.

Additionally, the appellants argue that it was reversible error for the judge and the BIA to deny discretion because of an alleged preconceived intent to immigrate on the part of the Frises. Because the judge found that the Frises did not meet the threshold requirements (namely, the "extreme hardship" requirement), he was not permitted to reach the "discretionary" tier of the statute in order to grant or deny the applicants' request for suspension of deportation. Thus, the implication in his opinion that he would have denied the Frises' application as a matter of discretion based on in part the fact that they had a preconceived intent to immigrate is at most mere dictum. We thus do not find it necessary in this case to address the merits of this argument.

All the appellants are in apparent good health, speak both Danish and English, and are not returning to a country with an unstable political or economic regime. Although Karen may be forced to enter a retirement home upon her return to Denmark because of the high cost of living in her country, this circumstance does not amount to an "extreme hardship." Similarly, although Benedicte fears that she will not be able to find employment upon her return to Denmark, she has a history of gainful employment in her native country; she testified that she earned approximately $3000 per month while employed there. She offered no evidence to show that she would be unable to resume such employment upon her return to Denmark. Finally, although Thomas may have the most difficulty in reacclimating himself to his native country, he is able to communicate orally in Danish and has the advantage of youth. His mother and grandmother will certainly assist him in his adjustment to life in Denmark. In short, we see nothing in the record to indicate that the hardship the Frises claim will befall them upon their return to Denmark would be "uniquely extreme, at or approaching the outer limits of the most severe hardship the alien could suffer and so severe that any reasonable person would necessarily conclude that the hardship is extreme."

IV

In conclusion, we find that the BIA did not abuse its discretion in dismissing the Frises' appeal. Therefore, the judgment of the Board of Immigration Appeals must be

A F F I R M E D.