

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-4612
Summary Calendar

JUANA ESTELBINA PINEDA-TORRES,

Petitioner,

versus

IMMIGRATION AND NATURALIZATION
SERVICE,

Respondent.

Petition for Review of an Order of the
Immigration and Naturalization Service
(A 29 398 514)

(September 1, 1993)

Before GARWOOD, JONES, and EMILIO M. GARZA, Circuit Judges.*

GARWOOD, Circuit Judge:

Petitioner-appellant, Juana Estelbina Pineda-Torres (Pineda), appeals the decision of the Board of Immigration Appeals (BIA) affirming the denial of her application for suspension of deportation under 8 U.S.C. § 1254(a)(1). We affirm.

* 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Facts and Proceedings Below

Pineda lawfully entered the United States as a nonimmigrant student from Nicaragua on April 19, 1979. She attended school full-time in New Orleans, Louisiana through May of 1983, earning an Associates Degree in business administration.

Pineda has given birth to five United States citizen children since she arrived here. These children were born on the following dates: June 3, 1984, girl; June 14, 1985, twins, a boy and a girl; November 10, 1986, a girl; August 12, 1988, a boy. All were fathered by her "common law husband," a naturalized United States citizen from Jordan, with whom she still resides.¹ Three of her children attend public schools in New Orleans, and at least one of them is an honor roll student.

Although she is now thirty-two and able bodied, Pineda takes care of her children and does not work. Her "husband" supports her and her children through his job as a truck driver.

Pineda has no family members remaining in Nicaragua. Her family left in 1979 during the revolution. Six of Pineda's brothers and sisters all live in the United States (in New Orleans), either as United States citizens or lawful permanent residents. Some acquired citizenship via political asylum. Her parents and two other brothers have lived in Costa Rica since fleeing Nicaragua.

On December 15, 1989, the Immigration and Naturalization Service (INS) issued Pineda an Order to Show Cause, charging that

¹ He has refused to formally marry her because he is Muslim and she is Catholic.

Pineda was deportable for failing to comply with the conditions of the nonimmigrant status under which she was admitted.

Pineda conceded deportability, but asked the INS to suspend her deportation on the grounds of extreme hardship. The INS stipulated that Pineda had been in the United States for more than seven years and that she was of good moral character, but contended that she did not qualify for deportation suspension because it would not cause extreme hardship. Both the Immigration Judge and the BIA denied her suspension request, finding that she did not qualify for the extreme hardship exception. Both opinions discussed Pineda's family status and found that Pineda and her family would suffer some hardship upon her deportation, but also found that the hardship suffered would not be "extreme." Both held that Pineda had to return to Nicaragua, but granted her request for voluntary departure. Pineda now appeals the BIA's decision affirming the denial of her request for suspension of deportation.

Discussion

Under the Immigration and Nationality Act (the Act), a "deportable" alien may have her deportation suspended under 8 U.S.C. § 1254(a)(1) where the Attorney General finds that the alien has been in the United States for a continuous period of seven years immediately prior to her application for suspension, is of good moral character, and is a person whose deportation would result in extreme hardship to the alien or to her United States citizen or permanent resident spouse, parent or children. Pineda concedes deportability and the United States concedes that Pineda has been in the United States for more than seven years and that

she is of good moral character. Thus the only issue we must address is whether the BIA erred in finding that she does not qualify for the extreme hardship exception.

Our substantive review of BIA findings on the question of extreme hardship is severely limited because the statutory scheme leaves the determination of extreme hardship to the discretion of the Attorney General. *Hernandez-Cordero v. U.S.I.N.S.*, 819 F.2d 558, 562-63 (5th Cir. 1987) (en banc).² "[W]e 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." *Id.* at 563. See *Vargas v. I.N.S.*, 826 F.2d 1394 (1987).

Pineda alleges that she qualifies for extreme hardship status because she has five young children in New Orleans, her six brothers and sisters reside in New Orleans, she has no family in Nicaragua, the political climate in Nicaragua is unstable, she would have to either leave her children here or take them from her father, and she has no means of financial support in Nicaragua. In sum, Pineda claims that she and her children would suffer extreme family and economic hardships through deportation. No claim of extreme hardship to her "common-law" husband is made (we do not

² Pineda has not challenged the BIA decision on the grounds that the BIA procedurally erred by failing to consider the hardships alleged by Pineda. See *Hernandez-Cordero*, 819 F.2d at 563. Here it appears that the BIA adequately addressed all of Pineda's hardship claims.

address whether he would qualify as a spouse).

We recognized in *Ramos v. I.N.S.*, 695 F.2d 181, 186-187 (5th Cir. 1983), that economic detriment combined with strong relevant family hardship could result in a finding of extreme hardship. However, as the BIA concluded in the case, Pineda has not proven her claim of extreme hardship by economic detriment. She is healthy and able bodied. She has not proven that she would be unable to find work to support herself and her children in Nicaragua. Similarly, although there is no doubt that she and her family will suffer some hardships from her deportation, and it may be assumed that some emotional trauma will result therefrom and from the fact that the children will either be separated from her or from their father, and if they stay with her will be in a foreign country, the record does not compel the conclusion that this (alone or together with economic detriment) amounts to "extreme hardship." This is an issue on which Pineda has the burden of proof. See *Lopez-Rayas v. I.N.S.*, 825 F.2d 827, 829 & n.7 (5th Cir. 1987). There is little, if any, evidence directly addressing the effect on the children of having to leave either their country (and their father) or their mother. This contrasts sharply with the evidence in *Ramos*, and even in *Ramos* we did not hold that the far stronger and more specific evidence there required the BIA to find extreme hardship as a matter of law (we only held that the BIA failed to adequately address those matters). Finally, Pineda's claims that her life might be difficult on returning to Nicaragua because of the possibility of political persecution are too general and conclusory to qualify as extreme

hardship. See *Farzad v. I.N.S.*, 802 F.2d 123, 126 (5th Cir. 1986).

Conclusion

Accordingly, the decision of the BIA affirming the denial of Pineda's request for suspension of deportation is

AFFIRMED.