

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-4771
Summary Calendar

BABAK MOAZZAMI,

Petitioner,

VERSUS

IMMIGRATION AND NATURALIZATION SERVICE,

Respondent.

Petition for Review of an Order
of the Board of Immigration Appeals
(A23 703 066)

(March 4, 1993)

Before JOLLY, DUHÉ, and BARKSDALE, Circuit Judges.

PER CURIAM:¹

Babak Moazzami petitions for review from the dismissal by the Board of Immigration Appeals (Board) of his appeal from a denial of discretionary asylum under § 208(a) of the Immigration and Naturalization Act (INA), 8 U.S.C. § 1158(a). We **DISMISS** the petition.

I.

Moazzami is a native and citizen of Iran. From age 12 to 17, he lived in England, where he attended boarding school. Following

¹ Local Rule 47.5.1 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 Pursuant to that rule, the court has determined that this opinion should not be published.

graduation in 1982, Moazzami came to the United States upon the invitation of his uncle, a United States citizen, purportedly for only a brief visit. Within a day or two of his arrival, however, he enrolled in an American university, and subsequently obtained a six-month extension on his tourist visa.

Moazzami also applied for a change of non-immigrant status to that of student, which was denied in April 1984, following a determination that he had entered the United States with the intent to study here, and had therefore improperly obtained his tourist visa. Moazzami then applied for asylum, which was also denied. When he failed to voluntarily leave the United States within the 30 days allowed him, Moazzami was placed in deportation proceedings.

In the proceedings, Moazzami conceded deportability under § 241(a)(2) of the INA, 8 U.S.C. § 1251(a)(2), as an alien admitted as a non-immigrant who remained beyond his authorized period of time, but renewed his application for asylum. In August 1987, the immigration judge (IJ) denied his request for asylum as a matter of discretion, but granted him the alternative relief of voluntary departure, under § 244(e) of the INA, 8 U.S.C. § 1254(e), and withholding of deportation to Iran, under § 243(h) of the INA, 8 U.S.C. § 1253(h). Moazzami appealed to the Board, which, in July 1992, dismissed the appeal.

II.

Moazzami contends that the Board abused its discretion in denying him asylum. Section 208(a) of the INA, 8 U.S.C. § 1158(a), provides that an "alien may be granted asylum in the discretion of

the Attorney General if the Attorney General determines that such alien is a refugee within the meaning of section 1101(a)(42)(A) of this title".² The Board agreed with the IJ's determination that Moazzami was statutorily eligible for asylum, but denied it as a matter of discretion, based on his *mala fide* non-immigrant entry into the United States, his adherence to "implausible testimony" regarding that entry, the fact that he had not fled danger in England, and the Board's conclusion that the bearing of his family ties to the United States was weakened by his aunt's and uncle's participation in the fraudulent arrangement.

Congress has prescribed no standards for the exercise of discretion in granting asylum under § 208(a). See ***INS v. Cardoza-Fonseca***, 480 U.S. 421, 444-45 (1987) (stating, "although Congress could have crafted a narrower definition, it chose to authorize the Attorney General to determine which, if any, eligible refugees should be denied asylum"). Accordingly, this court's substantive review of the Board's decision is extremely narrow. See ***Hernandez-Cordero v. INS***, 819 F.2d 558, 562 (5th Cir. 1987). Because review of agency decisions for abuse of discretion is possible "only where

² Section 1101(a)(42) defines "refugee" as an alien who is "unable or unwilling to return to [his country] ... because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion".

Moazzami's father was a high-ranking official, who, along with his wife, was imprisoned in 1981 following the Iranian revolution. One of Moazzami's brothers was also imprisoned for several months in 1983 when he returned to Iran to check on their parents. As of the time of Moazzami's deportation hearing, his father was still in jail.

statutory language sets constraints on the agency's discretion", **Perales v. Casillas**, 903 F.2d 1043, 1048 (5th Cir. 1990), our review is limited to procedural regularity, **Hernandez-Cordero**, 819 F.2d at 563. Under this standard, the Board's decision must be upheld if the Board "consider[ed] the issues raised, and announce[d] its decision in terms sufficient to enable a reviewing court to perceive that it has heard and thought and not merely reacted". **Osuchukwu v. INS**, 744 F.2d 1136, 1142-43 (5th Cir. 1984).

The Board's decision falls well within this standard. The Board examined in detail the issues raised, including Moazzami's contentions that the IJ gave too much weight to the manner of his entry,³ that the IJ's adverse credibility finding was erroneous,⁴

³ Contrary to Moazzami's assertion in his brief, and as noted above, the denial of asylum was not based solely on the finding that he entered the United States as a *mala fide* non-immigrant. Furthermore, the Board carefully distinguished **Matter of Pula**, 19 I&N Dec. 467 (BIA 1987), the case upon which Moazzami primarily relies in this petition. Finally, Moazzami's implication that the Supreme Court held that Congress adopted the United Nations High Commission for Refugees, *Handbook on Procedures and Criteria for Determining Refugee Status, Under the 1951 Convention and 1967 Protocol Relating to the Status of Refugees (1979)*, in **Cardoza-Fonseca** is disingenuous. In that case, the Supreme Court expressly stated, "We do not suggest, of course, that the explanation in the U.N. Handbook has the force of law or in any way binds the INS with reference to the asylum provisions of § 208(a)". 480 U.S. at 439 n.22.

⁴ The Board agreed with the IJ's factual determination that Moazzami entered the United States with the intent to attend school, not as a *bona fide* non-immigrant. We can reverse this factual finding only if the evidence to the contrary was such that "a reasonable factfinder would have to conclude" otherwise. **INS v. Elias-Zacarias**, ___ U.S. ___, 112 S. Ct. 812, 815 (1992). This standard is not met. The evidence supporting the finding was adequately cited and explained by the Board.

and that the closeness of his family ties to the United States supports a favorable exercise of discretion. Its thorough explanation for its decision demonstrates that it gave careful consideration to the issues presented, and did not "merely react[]".

III.

For the foregoing reasons, the petition is

DISMISSED.

The cases Moazzami cites from other circuits applying more lenient review in asylum cases are not binding on us; have probably been superseded by ***Elias-Zacarias***; and, in any event, address the determination of *eligibility* for asylum (i.e., refugee status), not the exercise of discretion once eligibility is established. See ***Aguilera-Cota v. United States INS***, 914 F.2d 1375 (9th Cir. 1990); ***Turcios v. INS***, 821 F.2d 1396 (9th Cir. 1987); ***Damaize-Job v. INS***, 787 F.2d 1332 (9th Cir. 1986); ***Saballo-Cortez v. INS***, 761 F.2d 1259 (9th Cir. 1985); ***Zavala-Bonilla v. INS***, 730 F.2d 562 (9th Cir. 1984).