

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-4923
Summary Calendar

JUAN ESTEBAN DE LOS SANTOS-SANCHEZ,

Petitioner,

versus

IMMIGRATION AND NATURALIZATION SERVICE,

Respondent.

Petition for Review of an Order of the
Immigration and Naturalization Service

(A30 934 297)

(December 16, 1993)

Before POLITZ, Chief Judge, JONES and EMILIO M. GARZA, Circuit Judges.

POLITZ, Chief Judge:*

Juan Esteban De Los Santos-Sanchez petitions for review of an order of the Board of Immigration Appeals affirming his deportation. Santos-Sanchez challenges the Board's refusal to change venue as violative of due process, and its denial of a

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

waiver of deportation as arbitrary and capricious. Finding no error, we affirm.

Background

A native and citizen of the Dominican Republic, Santos-Sanchez entered the United States as a lawful permanent resident in 1972. His mother and father also permanently reside here, although Santos-Sanchez lost contact with his father over eight years ago. Both Santos-Sanchez and his mother suffer from a disability and live on disability benefits. Santos-Sanchez has two children, United States citizens by birth, but neither supports nor communicates with either.

In 1986 Santos-Sanchez began the accrual of an extensive criminal record including:

1. March 1986: burglary, possession of burglary tools, and theft. Sentenced to concurrent 11 months imprisonment on each count.
2. June 1987: grand theft. Sentenced to two years imprisonment, placed on probation for one year.
3. January 1989: burglary and possession of burglary tools. Two-year concurrent sentences.
4. October 1989: aggravated assault on a police officer, 57-day sentence imposed on withheld adjudication.
5. August 1991: burglary and theft. One year and one day and a concurrent 60-day sentence imposed.

On November 10, 1991 an Order to Show Cause issued charging

Santos with deportability.¹ At a hearing in March 1992 the immigration judge granted Santos-Sanchez' motion for a change in venue conditioned on the filing of a Form I-191 application for section 212(c) relief.² Three weeks later, the judge vacated this order and denied the motion because no application was filed. Shortly thereafter Santos-Sanchez' representative asked leave of the court to withdraw;³ the judge granted this request and gave Santos-Sanchez another opportunity to file a Form I-191 application. Santos-Sanchez filed but the judge denied his renewed motion for change of venue.

On April 20, 1992 the judge addressed the substantive issues and found convincing evidence of Santos-Sanchez' deportability but continued the proceedings to allow Santos-Sanchez time to gather further evidence in support of his waiver petition. The additional evidence was presented and the judge found Santos-Sanchez deportable and denied his waiver application. The Board affirmed. The instant petition for review followed.

Analysis

Santos-Sanchez first claims denial of a fair hearing because the judge denied his motion for a change of venue. That decision lies within the judge's sound discretion. In assessing that

¹8 U.S.C. § 1251(a)(2)(A)(ii).

²8 U.S.C. § 1182(c).

³Santos-Sanchez urged the representative to withdraw, blaming him for failure to file the waiver application.

decision we consider several factors: administrative convenience, expeditious treatment of the case, location of witnesses, cost of transporting witnesses or evidence, and factors associated with the alien's residence.⁴ The judge *a` quo* found that the cost of transporting Santos-Sanchez and the late state of the proceedings militated against changing venue. We perceive no abuse of discretion in this ruling.

Santos-Sanchez next challenges as arbitrary and capricious the denial of his section 212(c) application. Section 212(c) gives the Attorney General the discretion to readmit an excludable lawful permanent resident who temporarily proceeded abroad if that resident is returning to a lawful unrelinquished domicile of seven consecutive years. It is now well recognized that this discretion likewise extends to excludable lawful permanent residents who have not left the United States.⁵ Thus, as a lawful permanent resident with a continuous domicile for seven years Santos-Sanchez is statutorily eligible for a section 212(c) waiver of deportation.

Statutory eligibility is but a threshold determination; more is required for the exercise of the statutorily-granted discretion.⁶ The seminal case of **Matter of Marin** guides our analysis. We consider: (1) family ties; (2) duration of

⁴See **Matter of Rahman**, Interim Decision 3174 (BIA 1992).

⁵See **Madrid-Tavarez v. INS**, 999 F.2d 111 (5th Cir. 1993); **Francis v. INS**, 532 F.2d 268 (2d Cir. 1976); **Matter of Hernandez-Casillas**, Interim Decision 3147 (BIA 1990; A.G. 1991).

⁶**Matter of Buscemi**, 19 I&N Dec. 628 (BIA 1988); **Matter of Marin**, 16 I&N Dec. 581 (BIA 1978).

residence; (3) hardship to respondent and his family; (4) military service; (5) employment history; (6) property ownership, business ties; (7) service to community; (8) measure of rehabilitation; and (9) relevant evidence of good character. Adverse factors include: (1) specifics of reason for excludability; (2) other violations of immigration laws; (3) criminal record; and (4) relevant evidence of bad character. Subsequent decisions have refined these principles. If the adverse findings are serious the alien must acquit the burden of showing unusual and outstanding equities.⁷

It is apparent that the adverse factors at bar were serious and, accordingly, Santos-Sanchez had to demonstrate unusual and outstanding equities to warrant the requested relief. The evidence of the positive factors is scant. Santos-Sanchez has lost contact with all members of his family save his mother. He has had no contact with his father for over eight years and has neglected his children for nearly the entirety of their lives. He is unemployed, owns no property, has no business or community ties or activities and, as relates to his criminal record, demonstrates no evidence of rehabilitation or remorse.

Santos-Sanchez' lengthy period of lawful permanent residency qualifies as a significant equity, but that factor alone does not equate to section 212(c) relief. The adverse factors overwhelm his period of residence. The immigration judge so concluded. The Board agreed. So do we.

The petition of review is DENIED.

⁷**Buscemi; Matter of Marin.**