

UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 92-4999
Summary Calendar

Jorge Sivilla-Lopez,

Petitioner,

VERSUS

Immigration and Naturalization Service,

Respondent.

Petition for Review of an Order of
the Board of Immigration Appeals
A22 941 060

April 19, 1993

Before JOLLY, DUHÉ, AND BARKSDALE, Circuit Judges

PER CURIAM:¹

Jorge Sivilla-Lopez appeals the denial of his application for relief from deportation under Section 212(c) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1182(c). The immigration judge, having found Sivilla deportable, denied his request for discretionary relief from deportation. The Board of Immigration Appeals (BIA) upheld the order of the immigration judge. We affirm.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Background

Jorge Sivilla-Lopez, a lawful permanent resident since 1978, is a married, 54 year old native and citizen of Spain. Sivilla's wife is also a permanent resident. Sivilla has a daughter from a first marriage who is a permanent resident, but resides in Mexico.

Since entering the United States, Sivilla has worked at various jobs in the book sales business. He has also sold used cars. While working for a used car business in Houston, Sivilla was arrested when police found a briefcase in his car containing one and a half pounds of cocaine. Sivilla claimed that the briefcase belonged to his employer who requested that Sivilla bring it with him to work. Sivilla suspected he was transporting drugs but received no compensation for his role. He pled guilty to possession of cocaine and served 15 months of a 10 year sentence before being paroled.

Sivilla conceded his deportability due to the drug conviction.

He requested relief from deportation, as he was statutorily eligible to do, under § 212(c) of the INA. The immigration judge, in his discretion, denied Sivilla's request. The BIA upheld that decision. Sivilla appeals.

Discussion

Sivilla argues that the Board abused its discretion in denying him relief from deportation under § 212(c). He contends that based

on the criteria articulated in Matter of Marin, 16 I & N Dec. 581 (B.I.A. 1978), relief should have been granted.²

Section 212(c) makes a waiver of excludability (hence, deportation) available "in the discretion of the Attorney General." Because § 212(c) does not provide for standards governing how the Board's discretion should be exercised, the Attorney General has unusually broad discretion in granting and denying waivers. Ashby v. INS, 961 F.2d 555, 557 (5th Cir. 1992). We limit our review to whether denial of a waiver was "arbitrary, irrational, or contrary to law." Diaz-Resendez v. INS, 960 F.2d 493, 495 (5th Cir. 1992). Additionally, our review is "exceedingly narrow" and "severely limited." Ashby v. INS, 961 F.2d at 557.

In addition to satisfying the criteria under Marin, Sivilla was required to demonstrate that his equities were of an unusual or outstanding nature to countervail the serious drug offense. Marin, 16 I & N Dec. 581, 586 n.4 (B.I.A. 1978). In analyzing the equities, the immigration judge found that Sivilla had no family in the United States other than his wife, and that she would accompany

² When the court balances the adverse and favorable considerations, the following factors are generally considered favorable when dealing with relief from deportation petitions: (a) the existence of substantial family ties within the United States; (b) residence of long duration in this country (particularly when the inception of residence occurred while the appellant was of young age); (c) evidence of hardship to the appellant and his family if deported; (d) service in the Armed Forces; (e) history of employment; (f) the existence of property or business ties; (g) evidence of value and service to the community; (h) rehabilitation, if a criminal conviction is at issue; and (i) other evidence of good moral character. Additionally, the alien bears the burden of demonstrating that his application warrants favorable consideration. Marin, 16 I & N Dec. 581, 582-83 (B.I.A. 1978).

him if deported to Spain. At the time of the immigration judge's decision, Sivilla had only been in the United States for 9 years which is only 2 years more than the 7 years required for § 212(c) relief. With respect to his employment history, the Board found that Sivilla had not held any position for a significant length of time. Finally, although the Board noted several factors weighing in favor of Mr. Sivilla, it concluded that none of them were of an unusual or outstanding nature. While the Court is sympathetic to Mr. Sivilla's circumstances, we find that the Board did not abuse its discretion in concluding that he had not established that he had outstanding equities. Therefore, the decision of the Board is AFFIRMED.