

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-5030

Summary Calendar

MANDANA KASHANIAN
McBRIDE,

Petitioner,

versus

IMMIGRATION AND NATURALIZATION
SERVICE,

Respondent.

Petition for Review of an Order of
the Immigration & Naturalization Service
A22 600 225

June 3, 1993

Before KING, DAVIS and WEINER, Circuit Judges.

PER CURIAM:*

Mandana Kashanian McBride, a native and citizen of Iran, appeals from the denial of her requests for asylum, withholding of deportation, and suspension of deportation. Finding that Mandana has failed to meet her evidentiary burdens, and that the Board of Immigration Appeals has not abused its discretion in

* 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 Pursuant to that rule, we have determined that this opinion should not be published.

affirming the immigration court's denial of Mandana's requests, we affirm.

I

Now age thirty-two, Mandana entered the United States on a nonimmigrant student visa in July 1978 when she was just seventeen. She subsequently married a nonimmigrant student, which changed her status, and she was authorized to remain in the United States until May 31, 1983. Mandana failed to leave the United States by this required date.

Deportation proceedings were commenced against Mandana in November 1983, and she was ordered to show cause as to why she should not be deported. At a deportation hearing held in January 1984, Mandana, through counsel, admitted the allegations in the order to show cause and conceded deportability, but she requested an opportunity to file an application for asylum. The immigration court granted Mandana that opportunity, and her deportation hearing was continued to permit her to file an application for asylum.

Mandana's hearing resumed in March 1987, at which time she and her brother, Kazem Kashanian, testified in support of her asylum application and request for suspension of deportation. Specifically, they testified that: Mandana, who considers herself completely "Westernized," left Iran prior to the Khomeini revolution, and, therefore, she has not lived under the Khomeini regime and does not approve of it; although she is a Muslim, she has never practiced her religion, and this would have a profound

impact on her life if she were returned to Iran; her brother, who was granted asylum in the United States, has received threatening telephone calls from other Iranians, and there is danger that Kazem's asylum will be held against Mandana; and, although married under United States law, Mandana was not married under Islamic rules and she would be considered to have had premarital sex and punished for this. Mandana also admitted that she fraudulently married a United States citizen for immigration purposes.

The immigration court denied Mandana's applications for asylum, withholding of deportation, and suspension of deportation, but granted her request for a voluntary departure. The court determined that Mandana failed to sustain her burden of establishing statutory eligibility for either asylum or withholding deportation. Specifically, the court stated that Mandana had not been back to Iran since the revolution, had not suffered past persecution, and that what she and her brother think might happen to her if she returns to Iran is simply speculation. The court also stated that, while the situation in Iran may be turbulent, Mandana failed to introduce evidence to establish that people in circumstances similar to hers are being persecuted in Iran. As for Mandana's application for suspension of deportation, the court determined that, although Mandana established that she might suffer economic hardship and cultural uprooting, these factors are not enough to constitute the requisite "extreme hardship."

Mandana appealed the immigration court's decision to the Board of Immigration Appeals (BIA), and the BIA affirmed the immigration court's decision. Mandana now appeals to this court.

II

Mandana challenges the immigration court's findings that she is ineligible for (a) asylum under section 208(a) of the Immigration and Nationality Act (the Act), codified at 8 U.S.C. §1158(a), (b) withholding of deportation under section 243(h) of the Act, codified at 8 U.S.C. § 1253(h), and (c) suspension of deportation under section 244(a)(1) of the Act, codified at 8 U.S.C. § 1254(a)(1). Mandana also asserts that (d) the court below erred in admitting the affidavit of her former spouse.

A & B

Mandana's first challenge is to the immigration court's finding that she is ineligible for both asylum and withholding of deportation. The burden of proof to establish eligibility for asylum and withholding of deportation rests upon the petitioner. See 8 C.F.R §§ 208.13(a), 242.17(c)(4)(iii) (1991); INS v. Stevic, 467 U.S. 407, 422 n.16 (1984); Guevara-Flores v. INS, 786 F.2d 1242, 1248 (5th Cir. 1986), cert. denied, 480 U.S. 930 (1987). An alien who seeks a withholding of deportation must show that his "life or freedom would be threatened" on account of one of the five grounds enumerated in section 243(h)(1) of the Act, codified at 8 U.S.C. § 1253(h)(1). To make this showing,

the alien must establish a "clear probability" of persecution,¹ which means that he or she must prove that it is "more likely than not" that he or she would be subject to persecution on account of one of the five statutory grounds. Stevic, 467 U.S. at 429-30. Upon meeting this standard and establishing eligibility, withholding of deportation is mandatory. See 8 U.S.C. § 1253(h)(1). "We review the BIA's factual conclusion that an alien is not eligible for withholding of deportation only to determine whether it is supported by substantial evidence." Zamora-Morel, 905 F.2d 838.

In contrast to the mandatory nature of withholding of deportation, the relief of asylum is discretionary. Section 208(a) of the Act, codified at 8 U.S.C. § 1158(a), authorizes the Attorney General to grant asylum to any alien that demonstrates he or she is a "refugee" within the meaning of section 101(a)(42) of the Act, codified at 8 U.S.C. § 1101(a)(42). Section 101(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." 8 U.S.C. § 1101(a)(42)(A); INS v. Cardoza-Fonseca, 480 U.S. 421, 428 n.5 (1987) (upon determining that an alien is a refugee, the Attorney General may exercise his discretion to grant asylum). Therefore, to obtain asylum, an

¹ Stevic, 467 U.S. at 413; Zamora-Morel v. INS, 905 F.2d 833, 837 (5th Cir. 1990).

alien must show (1) persecution, or a well-founded fear of persecution, on account of one of the statutory grounds and (2) that he or she merits asylum as a matter of discretion. See Campos-Guardado v. INS, 809 F.2d 285, 291 (5th Cir. 1987), cert. denied, 484 U.S. 826 (1987). To establish a well-founded fear of persecution, an alien must establish "that a reasonable person in his or her circumstances would fear persecution if deported." Guevara Flores v. INS, 786 F.2d 1242, 1249 (5th Cir. 1986), cert. denied, 480 U.S. 930 (1987). This determination turns to an extent on the "subjective mental state of the alien" and on the "objective nature of his reasons for fearing persecution." INS v. Cardoza-Fonseca, 480 U.S. at 430-31. "The standard is only partially subjective, however, because it requires that the fear be a well-founded one. The alien's fear must have some basis in the reality of the circumstances; mere irrational apprehension is insufficient to meet the alien's burden of proof." Guevara-Flores v. INS, 786 F.2d at 1249.

We review a denial of asylum for abuse of discretion. Zamora-Morel v. INS, 905 F.2d 833, 838 (1990); see Kapcia v. INS, 944 F.2d 702, 708 & n.5 (10th Cir. 1991) (in an asylum procedure, the discretion of the Attorney General is "extremely broad"). As for applying this standard, the Supreme Court recently held that a BIA determination that an alien is not eligible for asylum "can be reversed only if the evidence presented by [the petitioner] was such that a reasonable factfinder would have to conclude that the requisite fear of persecution existed." INS v.

Elias-Zacharias, __ U.S. __, __, 112 S. Ct. 812, 815 (1992). In other words, "[t]o reverse the BIA finding we must find that the evidence not only supports that conclusion, but compels it--and also compels the further conclusion that [the petitioner] had a well-founded fear [of persecution]." Id. at 815 n.1. And, finally, the factual findings undergirding a determination that an alien has not established eligibility for asylum are reviewed under the substantial evidence standard. INS v. Elias-Zacarias, __ U.S. __, 112 S. Ct. 812, 815 (1992); Adebisi v. INS, 952 F.2d 910, __ (5th Cir. 1992).

In the case before us, the immigration court and the BIA determined that Mandana failed to meet her minimum burden by demonstrating at least a well-founded fear of persecution.² Mandana left Iran before the Khomeini regime took control of the country, and she was never subjected to any act of persecution. The only evidence offered by Mandana and her brother is that she may be persecuted because (1) she has become accustomed to Western lifestyle, (2) she is not a devout Muslim, (3) because her fraudulent marriage was not performed under Islamic rules, she will be considered to have had premarital sex and could be punished, and (4) her brother has received political asylum, which has resulted in his receiving some threatening telephone

² As discussed above, "a well-founded fear of persecution" is the requisite showing for establishing a claim for asylum. A failure to meet this standard eliminates the possibility of meeting the higher "clear probability of persecution" standard required for establishing a claim of withholding of deportation. See generally Cardoza-Fonseca, 480 U.S. at 421.

calls from other Iranians. As stated by the immigration court, "the channels of communication are open between Iran and the United States and there has been no presentation of any evidence that either the respondent or anyone like the respondent or anyone who preceded the respondent back to Iran has been persecuted in a similar state." Accordingly, the immigration court denied Mandana's applications for political asylum and withholding of deportation, concluding that Mandana "failed to sustain the burden of establishing that she would be singled out for persecution, or that her life or freedom would be threatened if returned to Iran; as a result of race, religion, membership in a particular social group, nationality, or political opinion."

Having reviewed the record, we conclude that it contains no evidence which would compel a different result, and, therefore, that the BIA's affirmance of the immigration court's decision should be upheld. Elias-Zacarias, 112 S. Ct. at 815 & n.1. Specifically, to establish eligibility for the relief she seeks, Mandana would have had to "present specific facts through objective evidence if possible, or through . . . her own persuasive, credible testimony, showing actual persecution or detailing some other good reason to fear persecution . . ."
Ganjour v. INS, 796 F.2d 832, 837 (5th Cir. 1986) (emphasis in original); see also Rodriguez-Rivera v. INS, 848 F.2d 998, 1002 (9th Cir. 1988). Instead of testifying about specific facts and circumstances indicating persecution, Mandana and her brother have simply made speculative statements which suggest that

Mandana could be persecuted if returned to Iran. For example, Mandana has presented no evidence that the current government in Iran is even aware or interested in her political views. Compare Guevara-Flores, 786 F.2d at 1250-51; see also Bahramnia v. INS, 782 F.2d 1243, 1248 (5th Cir.), cert. denied, 479 U.S. 930, 107 S. Ct. 398 (1986). Moreover, although Mandana asserts that she will be persecuted as a result of her brother's asylum, the record reveals that Mandana has a sister and parents living in Iran, and Mandana has presented no evidence that these family members have been mistreated or persecuted. In sum, we conclude that the evidence introduced by Mandana does not compel us to reach the conclusion that a reasonable person in Mandana's circumstances would fear persecution if returned to Iran. Elias-Zacarias, ___ U.S. at ___, 112 S. Ct. at 815 (A decision of the BIA can only be reverse where "a reasonable factfinder would have to conclude that the requisite fear of persecution existed.") (emphasis added).

C

Section 244(a)(1) of the Act, codified at 8 U.S.C. § 1254(a)(1), authorizes the Attorney General to suspend an alien's deportation, and adjust his or her status to that of an alien lawfully admitted for permanent residence, when the alien (1) has been physically present in the United States for a continuous period of not less than seven years immediately preceding the date of the application, (2) can prove that during this entire period he or she was a person of good moral character, and (3)

has shown, to the satisfaction of the Attorney General, that his or her deportation would result in extreme hardship to his- or herself, or to an immediate family member--namely, his or her spouse, parent or child--who is a United States citizen or lawful permanent resident. We review a BIA finding that an alien has not met this "extreme hardship" requirement for abuse of discretion. See Vargas v. INS, 826 F.2d 1394, 1396 (5th Cir. 1987). As we stated in Hernandez-Cordero v. INS,

in the substantive review of a no 'extreme hardship' determination, 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 or the most severe hardship the alien could suffer and so severe that any reasonable person would necessarily conclude that the hardship is extreme.

819 F.2d at 562-63 (emphasis added). We also review such determinations for procedural regularity, but such review is limited to "ascertaining whether any consideration has been given by the BIA to the factors establishing extreme hardship." Id., quoting Sanchez v. INS, 755 F.2d 1158, 1160 (5th Cir. 1985).

Mandana's extreme hardship showing consisted of assertions that she will suffer cultural shock and will not be able to find work because she is not a devout Muslim. We have held on several occasions that economic hardship alone is not sufficient to justify a finding of "extreme hardship." See, e.g., Zamora-Garcia v. INS, 737 F.2d 488, 491 (5th Cir. 1984) ("It is well established that the adverse economic impact of deportation alone is insufficient to justify a finding of extreme hardship."); Aquilar v. INS, 638 F.2d 717, 719 (5th Cir. 1981); Chang v.

Jiugni, 669 F.2d 275, 279 (5th Cir. 1982). We have also held that giving up a lifestyle one has grown accustomed to does not constitute "extreme hardship." Pelaez v. INS, 513 F.2d 303, 304-05 (5th Cir.) (rejecting a claim that extreme hardship would result from deportation to the Philippines because of the difficulty of obtaining employment and the lower standard of living), cert. denied, 423 U.S. 892 (1975). Finally, we have held that "claims of political persecution have no relation to determining whether 'extreme hardship' exists, which would warrant suspension of deportation under § 244(a)(1)." Farzad v. INS, 802 F.2d 123, 126 (5th Cir. 1986), citing Kashefi-Zihagh v. INS, 791 F.2d 708 (9th Cir. 1986). Accordingly, we conclude that Mandana has failed to present "a case where the hardship is uniquely extreme," and, therefore, we will not reverse the BIA's determination. Hernandez-Cordero, 819 F.2d at 863.³

D

Mandana's final assertion is that the immigration court erred by admitting the affidavit of her former husband. We need not address whether the district court erred as Mandana alleges, because the record establishes that Mandana was not prejudiced by

³ In Hernandez-Cordero, we explained that:

The Attorney General enjoys 'unfettered' discretion to decide whether to suspend the deportation of an alien. . . . Judicial review of such a highly discretionary decision is strictly limited because the subject is uniquely within the competence and power of the political branches.

Id. at 560-61.

the admission of the affidavit. Specifically, the affidavit was offered on the issue of petitioner's "good moral character," and, as discussed above, the denial of Mandana's requests for asylum, withholding of deportation, and suspension of deportation were based upon her failure to meet the requisite evidentiary burdens. Moreover, the immigration court, over the INS's objection, granted Mandana a voluntary departure; the court could not have done this without finding that Mandana is of good moral character. See section 244(e) of the Act, codified at 8 U.S.C. § 1254(e) (The requirement for such a departure is that the alien "establish to the satisfaction of the Attorney General that he is, and has been, a person of good moral character")

III

For the foregoing reasons, we AFFIRM the BIA's affirmance of the immigration court's denial of Mandana's requests for asylum, withholding of deportation, and suspension of deportation.