

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No.92-5052
Summary Calendar

ANDRES FORTOLIS-MENDEZ,
ANDRES FORTOLIS-FERNANDEZ, JR.,
and CRISTINA FERNANDEZ-DE FORTOLIS,

Petitioners,

v.

IMMIGRATION AND NATURALIZATION SERVICE,

Respondent.

Petition for Review of an Order of the
Immigration and Naturalization Service
(A20 686 408, A29 946 718 & A29 946 719)

(December 9, 1993)

Before DAVIS, JONES, and DUHÉ, Circuit Judges.*

PER CURIAM:

From an order of deportation, Andres Fortolis-Mendez, his wife and a son object to procedural errors related to the finding of their deportability and to the denial of their request for suspension of deportation under 8 U.S.C. § 1254(a)(1). We affirm.

Appellants' first contentions are that the immigration judge did not follow proper procedures in finding Andres Fortolis-

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Mendez deportable, and the Orders to Show Cause pertaining to his wife and son erroneously referred to section 241(a)(1)(B) of the Immigration and Naturalization Act (entering without inspection) rather than section 241(a)(1)(C) (failure to maintain non-immigrant status). The husband, they maintain, was never properly found deportable nor did he concede that issue. These procedural arguments are waived, because appellants did not raise them before the Board of Immigration Appeals, and they have therefore failed to exhaust administrative remedies, preventing the issues from being raised for the first time in this court. Yohkpua v. INS, 770 F.2d 1317, 1320 (5th Cir. 1985).

The Board found that appellants complied with two of the requirements for obtaining a discretionary suspension of deportation under 8 U.S.C. § 1254(a)(1), because they had been physically present in the United States continuously for at least seven years immediately preceding the application for relief and they have maintained good moral character. The Board affirmed the decision of the immigration judge, however, in finding that deportation would not cause extreme hardship to the family members. This is the crucial third basis for obtaining relief. Appellants acknowledge that the Board's finding regarding the extreme hardship requirement cannot be overturned unless it represented an abuse of discretion. Hernandez-Cordero v. INS, 819 F.2d 558, 560 (5th Cir. 1987) (en banc). In that en banc case, this court also emphasized the extremely narrow scope of available judicial review. In light of this stringent standard, we cannot say that the BIA abused its

discretion in failing to find that this family will suffer extreme hardship by relocating from El Paso, Texas back to Mexico. They have alleged that the immigration judge and the Board failed to consider adequately (a) the hardship to twelve-year old Andres in changing cultures and educational systems, (b) the husband's economic hardship from relocating his business to Mexico, (c) the hardship in breaking up their extended family, and (d) the cumulative hardship upon the family members. Having carefully reviewed the administrative decisions in light of appellants' arguments, we disagree with these contentions. The decisions below demonstrate that the immigration judge did consider all of these factors, even if he did not evaluate their significance in the way suggested by appellants. For every suggestion of hardship that appellants have raised, the IJ and BIA saw the matter differently. The BIA, moreover, was entitled to adopt the IJ's analysis of hardship rather than have to repeat it and elaborate upon it in response to every argument of appellants. Hernandez-Cordero, 819 F.2d at 563. The decision of the BIA was rendered in accordance with applicable legal principles and is not so defiant of the facts that it could be said to represent an abuse of discretion.

The decision of the BIA is **AFFIRMED** and the petition for review **DISMISSED**.