IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 92-5135

Summary Calendar

Charles Olufemi Ige and Grace Ige
a/k/a Grace Ayeni,

Petitioners,

versus

Immigration and Naturalization Service,

Respondent.

Petition for Review of an Order of the
Immigration and Naturalization Service
(A27 178 229 & A27 27 594 794)

(May 21, 1993)

Before HIGGINBOTHAM, SMITH, and DeMOSS, Circuit Judges.

PER CURIAM:*

Charles Olufemi Ige and Grace Ige seek review of the Board of Immigration Appeals decision denying their requests for asylum. Mr. Ige also seeks review of the BIA's denial of his motion to remand to apply for suspension of deportation.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

I

The Iges are citizens of Nigeria. Mr. Ige arrived in the United States from Nigeria in 1983. Mrs. Ige arrived in 1985. Both were admitted as non-immigrant visitors for a limited time period. In May 1986, INS issued show cause order to the Iges, charging them with deportability as visitors who remained longer than permitted by their visas. Petitioners conceded deportability, but Mr. Ige filed an application for asylum and withholding of deportation pursuant to 8 U.S.C. §§ 1158 and 1253(h). His spouse would be entitled to similar asylum if it were granted to Mr. Ige.

Mr. Ige first applied for asylum with the INS in July 1984. He claimed to fear being persecuted in Nigeria for having served as an official in a former government and for his membership in the Reformed Ogboni Fraternity. The INS District Director denied this asylum request in 1985. Mr. Ige renewed the request during the deportation proceeding.

At his hearing, Mr. Ige testified that he worked as a secretary in the Nigerian Urban and Regional Planning Office from 1976 until 1983.[1] According to Mr. Ige, a change of government occurred in December 1982 that became final in February 1983. Civilian officials were dismissed from their posts by the new military government. Mr. Ige testified that many ROF members were arrested. He believes they were killed because non-ROF arrestees

[1]Mr. Ige's Request for Asylum refers to this as the Ministry of Lands and Housing.

were released by the military government. Mr. Ige claimed that he left Nigeria in November 1983 because his life was in jeopardy.

The State Department's 1986 Country Report for Nigeria and the 1985 Amnesty International Report state that the military government seized power from the civilian one in December 1983. The State Department reported that all former politicians were excluded from public office and a number were to be prosecuted for corruption. The report concluded, however, that there was no politically-motivated torture or killing by the government in 1986.

A 1984 letter from Mr. Ige's sister refers to the military government and the arrest of some politicians. She urged Mr. Ige to "Pls [sic] stay away!" When Mrs. Ige arrived in the United States in August 1985, she told Mr. Ige that the government was looking for him.

Mr. Ige stated that he joined ROF in 1979; documents he provided indicate his initiation into ROF in 1982. He testified ROF provides mutual assistance and is based upon social and political ideas that supported the civilian government. ROF sponsored some candidates for public office, although the public may not have been aware of this sponsorship due to the group's secrecy. After the military takeover, Mr. Ige claims that the government began disrupting ROF activities and destroying its meeting places. Mr. Ige states that ROF members were arrested and he believes that they were killed. Mr. Ige testified that he would be killed if he returned to Nigeria because of his ROF membership.

Petitioners' son Frederick was born in March 1987 in Austin, Texas, and therefore is an American citizen. In an affidavit submitted to the BIA, Mr. Ige stated that Frederick "would suffer an extraordinary hardship if he was to stay in the United States and be separated from" petitioners.

The Immigration Judge denied Ige's request for asylum and withholding of deportation on July 13, 1987. Petitioners appealed to the BIA. While the appeal was pending, Mr. Ige filed a motion to remand and reopen proceedings in order to apply for suspension of deportation under 8 U.S.C. § 1254(a)(1). On October 5, 1992, BIA affirmed the IJ's decision that Mr. Ige was not eligible for asylum. BIA also denied the motion to remand and reopen, concluding that Mr. Ige failed to make a prima facie showing of extreme hardship.

II

Mr. Ige bears the burden of demonstrating eligibility for asylum and withholding relief. Campos-Guardado v. INS, 809 F.2d 285, 290 (5th Cir.), cert. denied, 484 U.S. 826, 108 S. Ct. 92 (1987). To show eligibility for asylum, he must prove a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. A well-founded fear is one that a reasonable person would share under the same circumstances. Zamora-Morel v. INS, 905 F.2d 833, 837 (5th Cir. 1990). It must have some basis in the reality of the circumstances--irrational apprehension is insufficient to meet the alien's burden of proof. Guevara Flores v. INS, 786 F.2d

1242, 1249 (5th Cir. 1986), cert. denied, 480 U.S. 930, 107 S. Ct. 1565 (1987). Demonstrating a well-founded fear establishes only eligibility; the decision to grant or deny asylum rests in the hands of the Attorney General. Zamora-Morel, 905 F.2d at 837.

We review the BIA's conclusion that an alien is not eligible for consideration for asylum only to determine whether it is supported by substantial evidence. Id. at 838. The substantial evidence standard requires only that the BIA's conclusion be based upon the evidence presented and be substantially reasonable. Rojas v. INS, 937 F.2d 186, 189 (5th Cir. 1991). We review only the decision of the BIA, except that we may consider the errors of the IJ to the extent that they affect the BIA decision. Ogbemudia v. INS, --- F.2d ---, ---, 1993 WestLaw 95623 at *3 (5th Cir. April 19, 1993).

Petitioners complain that the BIA dismissed their appeal without conforming to regulations governing summary dismissal. Petitioners contend that by adopting the reasoning of the IJ, the BIA failed to conduct a sufficient review of his decision and so "in essence" summarily dismissed the appeal. We disagree. Rather than summarily dismissing the appeal, the Board affirmed the decision of the IJ by expressly adopting his findings and conclusions.[2] We are not persuaded that the BIA cannot adopt findings and conclusions contained in the record as its own.

[2]"We find that the immigration judge adequately and correctly addressed the issues raised on appeal, and we will accordingly affirm his decision based upon and for the reasons set forth in that decision." Administrative Record at 3.

Express adoption makes the IJ's reasoning the BIA's reasoning--there is no point in requiring the BIA to transcribe that analysis. The regulations governing summary dismissal are not applicable.

The BIA's decision that Mr. Ige has failed to prove a well-founded fear of persecution is supported by substantial evidence. The military government that came into power in 1983 and allegedly persecuted the ROF was itself overthrown by a coup in 1985, before petitioners' 1987 hearing. The State Department reported no evidence of politically-motivated government violence in 1986. Reported prosecutions of former government officials were based on charges of corruption, not their employment per se. Neither the State Department nor Amnesty International noted persecution of ROF members or former civil servants. Although the letter from Mr. Ige's sister advised him to stay away, it did not state that either his government employment or ROF membership made self-exile advisable.

Petitioners' testimony provided the only evidence on which to base his claim to a well-founded fear. Inconsistencies in the record call the testimony's credibility into question. Mr. Ige dates his membership to 1979, but documents indicate initiation in 1982.[3] Mr. Ige claims that ROF membership entails political beliefs that preclude renunciation. Some government employees who belonged to ROF, however, renounced their memberships during a 1970s ban of the group. Mr. Ige claims that he fled Nigeria in

[3]Although the documents expressly refer to his initiation, Mr. Ige testified that the dates reflect when the documents were later produced.

fear after the military coup, yet reports state that the military did not take over Nigeria until December 1983--one month after Mr. Ige came to the United States.

The conclusion that Mr. Ige did not establish that a reasonable person would fear persecution for an enumerated cause is substantially reasonable. The request for withholding requires the more difficult showing of a clear probability of persecution. Campos-Guardado, 809 F.2d at 290. Since the record supports the denial of asylum under the lesser burden, we need not address the withholding issue further. Rojas, 937 F.2d at 190.

III

We review the BIA's decision declining to reopen and remand the deportation proceedings for abuse of discretion.

The BIA will not reopen deportation proceedings unless the evidence sought to be offered is material and was not available and could not have been discovered or presented at the former hearing. 8 C.F.R. § 3.2; Ogbemudia, --- F.2d at ---, 1993 WestLaw 95623 at *4. If that threshold is met, the BIA may deny the motion if the movant fails to establish a prima facie case for the substantive relief sought. Id. at ---, 1993 WestLaw 95623 at *5; INS v. Abudu, 485 U.S. 94, 104, 108 S. Ct. 904, 912 (1988). The BIA found that Mr. Ige's motion failed to make a prima facie case supporting suspension of deportation.

The Attorney General has authority to suspend the deportation of aliens with good moral character who have been in the United States for seven years and whose deportation would result in

extreme hardship. This decision lies in the discretion of the Attorney General, INS v. Rios-Pineda, 471 U.S. 444, 446, 105 S. Ct. 1098, 2100 (1985), who may construe "extreme hardship" narrowly. INS v. Jong Ha Wang, 450 U.S. 139, 145, 101 S. Ct. 1027, 1031 (1981). Our review is limited; we may find abuse of discretion only where the hardship shown is uniquely extreme. Hernandez-Cordero v. U.S. INS, 819 F.2d 558, 562-63 (5th Cir. 1987). We may, however, review the BIA determination procedurally to ensure that all relevant factors have been fully considered. Zamora-Garcia v. U.S. Dep't of Justice INS, 737 F.2d 488, 490-91 (5th Cir. 1984).

Mr. Ige contends that the BIA ignored the fact that Mr. Ige has lost contact with relatives in Nigeria and his testimony that he has no job prospects in that country. We are persuaded that the BIA considered the economic factors to which these facts relate. Petitioners find more purchase with their challenge to the BIA's consideration of the impact of deportation on their son Frederick. See 8 U.S.C. § 1254(a)(1) (suspension permitted if deportation would result in extreme hardship to alien or his citizen child).

The BIA noted that Frederick was young and would easily adapt to life in Nigeria, even though he did not speak Yoruba and had never visited the country. The BIA did not, however, discuss the hardship that would result if Frederick, an American citizen, remains in the United States after his parents' deportation. Contrary to INS's assertion, Mr. Ige's affidavit raises the possibility that Frederick would remain and be separated from his parents. The BIA abused its discretion by failing to consider the

hardship to Frederick if he exercises his right to remain. Babai v. INS, 985 F.2d 252, 254-55 (6th Cir. 1993); Cerrillo-Perez v. INS, 809 F.2d 1419, 1426 (9th Cir. 1987). Since the BIA failed to consider all relevant factors in concluding that a prima facie case for suspension was not made, its refusal to reopen and remand petitioners' case constituted an abuse of discretion.

We AFFIRM the denial of petitioners' requests for asylum and withholding of deportation. We VACATE the denial of the motion to remand, and REMAND for proceedings consistent with this opinion.