

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-4005
Summary Calendar

LLOYD IVAN TYRELL,

Petitioner,

versus

IMMIGRATION AND NATURALIZATION SERVICE,

Respondent.

Petition for Review of an Order of the
Immigration and Naturalization Service
(A29 431 799)

July 28, 1993

Before JOLLY, WIENER, and E. GARZA, Circuit Judges.

PER CURIAM:*

Lloyd Ivan Tyrell appeals from an order of the Board of Immigration Appeals ("BIA"), contending that his state conviction for drug abuse is not a ground for deportation and that he demonstrated his eligibility for asylum or withholding of deportation. We AFFIRM.

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 Pursuant to that Rule, the court has determined that this opinion should not be published.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

Tyrell is a native and citizen of Jamaica. He entered the United States on November 26, 1982, as a nonimmigrant. On August 15, 1990, he married a United States citizen; they have a child who was born March 16, 1989.¹

On September 30, 1988, Tyrell was convicted in Ohio for drug abuse (cocaine), and on June 18, 1991, he was convicted of aggravated assault, also in Ohio. On the basis of these convictions, the INS commenced deportation proceedings against Tyrell on February 11, 1992. An immigration judge found him deportable as an alien convicted of a controlled substance violation.² The BIA remanded the case to the immigration judge to permit Tyrell to apply for asylum and withholding of deportation. On remand, the immigration judge denied Tyrell's requests for asylum and withholding of deportation. The BIA affirmed, and Tyrell petitioned for review.

II

A

Tyrell contends that his Ohio conviction for drug abuse does not constitute a conviction that can serve as the basis for deportation. Section 241(a)(2)(B)(i) of the Act provides that:

¹Tyrell states that his wife has filed an application for an immediate relative visa, which is still pending.

²The immigration judge concluded that Tyrell was not deportable as an aggravated felon based on the aggravated assault conviction.

Any alien who at any time after entry has been convicted of a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 802 of Title 21), other than a single offense involving possession for one's own use of 30 grams or less of marijuana, is deportable.

8 U.S.C. § 1251(a)(2)(B)(i). Tyrell asserts that his Ohio conviction for drug abuse "is not defined as a crime under 21 U.S.C. Section 802, hence it is not within the specification of Section 241(a)(2)(B)(i)." The BIA rejected this argument, concluding that § 241(a)(2)(B)(i) refers to 21 U.S.C. § 802 for the purpose of providing a definition for a "controlled substance," and not for the purpose of requiring that the crime be an offense under federal law.

We review questions of law de novo. However, our review of the BIA's interpretation of the immigration statutes is limited, and we defer to its interpretation "unless there are compelling indications that the Board's interpretation is wrong." Silwany-Rodriguez v. INS, 975 F.2d 1157, 1160 (5th Cir. 1992) (quoting Campos-Guardado v. INS, 809 F.2d 285, 289 (5th Cir.), cert. denied, 484 U.S. 826 (1987)).

We accept the BIA's interpretation. Under the plain meaning of § 241(a)(2)(B)(i), an alien is deportable if he has been convicted of a violation of "any law or regulation of a State, the United States, or a foreign country relating to a controlled substance" (except for possession of 30 grams or less of marijuana

for personal use). Tyrell concedes that his drug abuse conviction involved cocaine, which is a controlled substance within the meaning of 21 U.S.C. § 802. Accordingly, the BIA correctly held that Tyrell is deportable as an alien who has been convicted of a law relating to a controlled substance.

B

Next, Tyrell contends that he demonstrated his eligibility for asylum or withholding of deportation.

(1)

Section 208 of the INA authorizes the Attorney General, in her discretion, to grant asylum to an alien if the Attorney General determines that the alien is a "refugee." 8 U.S.C. § 1158. A refugee is an alien who has demonstrated that he is unable to return to his native 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." Castillo-Rodriguez v. INS, 929 F.2d 181, 184 (5th Cir. 1991) (quoting 8 U.S.C. § 1101(a)(42)). However, "[t]he term 'refugee' does not include any person who ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion." 8 U.S.C. § 1101(a)(42).³ We review the BIA's determination regarding

³Withholding of deportation is also unavailable to an alien who has persecuted others. See 8 U.S.C. § 1253(h).

statutory eligibility for asylum only to determine whether it is supported by substantial evidence. Castillo-Rodriguez, 929 F.2d at 184. "To obtain a reversal of the board's decision under this standard, the alien must show that the evidence he presented was so compelling that no reasonable fact-finder could fail to arrive at his conclusion." Silwany-Rodriguez, 975 F.2d at 1160.

In his application for asylum, Tyrell stated that he was afraid to return to Jamaica because of his prior political activities. He explained that, while a member of the Jamaica Defense Force, he was involved in a 1976 attempt to overthrow the People's National Party ("PNP"). Later, he worked in support of the political campaign of a candidate for the Jamaican Labor Party ("JLP").

At the hearing before the immigration judge, Tyrell testified that he joined the Jamaican army in 1974. In 1976, certain members of the army tried to overthrow the government, because the government had developed strong ties with Cuba. Between 1977 and 1980, as a supporter of the JLP party, Tyrell participated in tearing up runways and sabotaging airplanes arriving from Cuba. Tyrell stated that he "never really killed people at point blank," but admitted that he had returned fire when fired upon. Tyrell also testified that he removed the Cuban Ambassador from his office and took him to the airport, at gunpoint. Tyrell testified that after coming to the United States, he returned to Jamaica in 1982. While in Jamaica, he was recognized and shot at by an unidentified

gunman, who was with a group of people who were members of the PNP. With the help of Jamaica's Minister of Tourism, he obtained a visitor's visa and returned to the United States.

Although Tyrell has not been back to Jamaica since 1982, he testified that he had heard that people who had served with him in the Jamaican Army had been killed. Tyrell testified that he is a socialist, and that the communist PNP is currently in control of the Jamaican government. He stated that if he returned to Jamaica he would die "[b]ecause I stopped them from not having what they would have had."

The BIA denied Tyrell's applications for asylum and withholding of deportation on the ground that he is statutorily ineligible for such relief, because he had participated in the persecution of other persons based on their political opinions. The record contains substantial evidence to support this conclusion.

(2)

The BIA also determined that Tyrell was not eligible for asylum as a matter of discretion. We review the BIA's decision on this issue only for abuse of discretion. See Adebisi v. INS, 952 F.2d 910, 912 (5th Cir. 1992).

The BIA considered the facts that Tyrell entered the United States legally, was married to a United States citizen, had a child born in the United States, had maintained consistent employment, and had supported his family. It nevertheless considered that

these positive factors were outweighed by Tyrell's violent activities in Jamaica and by his two convictions in the United States. The BIA concluded that Tyrell's "terroristic activities while in his country and convictions in this country, show a lack of respect for the laws of the United States and his proclivity to use force as a resolution to his problems." The BIA did not abuse its discretion in denying discretionary relief.

III

The order of the Board of Immigration Appeals is

A F F I R M E D.