

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 93-4194  
Summary Calendar

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HAMIDOL KARIM, a/k/a  
Hamidol Kharim,

Petitioner,

versus

IMMIGRATION AND NATURALIZATION SERVICE,

Respondent.

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Petition for Review of an Order of the  
Immigration and Naturalization Service  
(A34 362 691)

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(October 8, 1993)

Before REAVLEY, SMITH and DeMOSS, Circuit Judges.

PER CURIAM:\*

Hamidol Karim appeals the Board of Immigration Appeals' dismissal of his request for discretionary relief from deportation pursuant to § 212(c) of the Immigration and Nationality Act ("the Act"), 8 U.S.C. § 1182(c) (West Supp. 1993). We affirm.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.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

Hamidol Karim, a native and citizen of Trinidad, entered the United States as a lawful resident on April 23, 1975. Karim was subsequently convicted in federal district court in Maryland on December 23, 1987 for: (1) conspiracy to distribute and possess with intent to distribute 5 kilograms or more of cocaine, in violation of 21 U.S.C. § 846; and (2) possession with intent to distribute over 500 grams of a mixture containing cocaine, in violation of 21 U.S.C. § 841. He was sentenced to six and one-half years in prison without parole, concurrent with ten years in prison.

An order to show cause was issued January 4, 1989, and Karim was charged with deportability based on his conviction under § 241 (a)(11) of the Act, 8 U.S.C. § 1251(a)(11). Karim conceded deportability as charged and requested relief from deportation under § 212(c) of the Act. An immigration Judge denied Karim's application on discretionary grounds and ordered that he be deported to Trinidad. The Board of Immigration Appeals affirmed the order of the immigration judge and Karim now appeals, claiming the Board's decision constitutes an abuse of discretion.

## II. DISCUSSION

The Board was correct in affirming the immigration judge's decision. Section 212(c) of the Act expressly makes relief from deportation available in the discretion of the Attorney General. Because § 212(c) does not provide for standards governing how

this discretion should be exercised, the Attorney General has unusually broad discretion in granting and denying waivers.

Ashby v. I.N.S., 961 F.2d 555, 557 (5th Cir. 1992).

Consequently, this court has stated that the scope of review in Board decisions is "exceedingly narrow." Id.

The Board's denial of a petition for relief under § 212(c) is reviewed for abuse of discretion, but such a denial will be upheld unless it is "arbitrary, irrational, or contrary to law." Ghassan v. I.N.S., 972 F.2d 631, 635 (5th Cir. 1992) (quoting Diaz-Resendez v. I.N.S., 960 F.2d 493, 495 (5th Cir. 1992)), *cert denied*, 113 S. Ct. 1412 (1993). The Board's decision affirming the decision of the immigration judge was not arbitrary, irrational, or contrary to law. The record reflects that its decision was based on a reasoned assessment of the present case.

Because the Board has broad discretion in determining whether an applicant merits the relief sought, the alien bears the heavy burden of demonstrating that his application merits favorable consideration. Ghassan, 972 F.2d at 636. In determining whether or not to grant a waiver, considerations presented in an alien's favor are balanced against adverse factors. In re Buscemi, 19 I. & N. Dec. 628, 633 (BIA 1988). Here, Karim was convicted of a serious drug offense, which requires him to make a heightened showing of unusual or outstanding equities. In re Edwards, Int. Dec. 3134 at 7 (BIA 1990). A showing of rehabilitation is also a discretionary

factor that should be considered and weighed against the seriousness of the crime. Id. at 8.

Although the immigration judge and the Board agreed Karim showed unusual or outstanding equities, they found the seriousness of the offense outweighed these considerations. As the Board has stated, "an alien who demonstrates unusual or outstanding equities, as required, merely satisfies the threshold test for having a favorable exercise of discretion considered in his case; such a showing does not compel that discretion be exercised in his favor." Buscemi, 19 I. & N. Dec. at 634; see also In re Marin, 16 I. & N. Dec. 581, 586 (1978). Furthermore, the Board agreed with the immigration judge that Karim presented no convincing evidence of rehabilitation.

The immigration judge sufficiently balanced all the factors in favor of and against granting the waiver and found the seriousness of the offense outweighed the positive factors. The Board then reviewed this decision and agreed with the judge's conclusion. This process does not constitute an abuse of discretion. See Ashby, 961 F.2d at 557-58. Furthermore, this court lacks the authority to determine the weight to be afforded each factor in Board related decisions. Molenda v. I.N.S., 998 F.2d 291, 295 (5th Cir. 1993). Thus as a reviewing court, we can not reweigh factors that were presented to the immigration judge. Id.

Because there was no abuse of discretion by the Board in affirming the immigration judge's decision, it is not necessary

to determine whether Karim is otherwise statutorily barred from a remedy.

Affirmed.