IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 93-4389
Summary Calendar

YONG SUN PETERS,

Petitioner,

versus

IMMIGRATION AND NATURALIZATION SERVICE,

Respondent.

Petition for Review of an Order of the Immigration and Naturalization Service (A22-782-973)

(September 20, 1993)

Before JOLLY, WIENER, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

The issue in this appeal concerns whether Mrs. Peters will suffer "extreme hardship" as defined by the Immigration and Nationality Act of 1952 if she and her son are deported to Korea. Because the Board of Immigration Appeals ("BIA") did not abuse its discretion in determining that Mrs. Peters would not suffer extreme hardship if deported, 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 Pursuant to that Rule, the court has determined that this opinion should not be published.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

Petitioner Yong Sun Peters and her then two-year-old son entered this country in November 1982 as K-1 non-immigrants authorized to remain in this country until February 20, 1983. At the time she entered the country, Mrs. Peters was engaged to marry an American citizen. In December 1983, she married her fiancee, but that marriage later failed and divorce papers were filed. On May 18, 1991, while Mrs. Peters's divorce was pending, the Immigration and Naturalization Service ("INS") issued a Show Cause Order that charged that Mrs. Peters was deportable under 8 U.S.C. § 1251(a)(1)(C)(i) (Supp. 1993).

II

At the December 12, 1991 show cause hearing, Mrs. Peters admitted the allegations in the Order and conceded deportability, designating Korea as the country of deportation. Mrs. Peters then sought a suspension of deportation under 8 U.S.C. § 1254(a)(1), or, in the alternative, voluntary departure. In July 1992, the Immigration Judge ("IJ") held a hearing on the merits of Mrs. Peters's application for suspension of deportation. After testimony by Mrs. Peters, the IJ denied Mrs. Peters' application for suspension of deportation, but he granted Mrs. Peters's request for voluntary deportation. Mrs. Peters appealed the IJ's denial of suspension of deportation to the BIA. The BIA agreed with the IJ's holding, and dismissed Mrs. Peters's appeal. Mrs. Peters now

appeals to this court, seeking review of the BIA's dismissal of her appeal.

III

The sole issue in this appeal concerns whether the BIA properly dismissed Mrs. Peters's appeal of the IJ's decision to deny suspension of deportation. We are authorized to review only the decision of the BIA, not the decision of the IJ, except to the extent that the errors of the IJ affects the de novo review of the BIA. Ogbemudia v. INS, 988 F.2d 595, 598 (5th Cir. 1993). Generally, we review final orders of deportation and examine factual findings to determine only whether there is substantial evidence to support the Board's conclusion. Diaz-Resendez v. INS, 960 F.2d 493 (5th Cir. 1992); Hernandez-Cordero v. United States INS, 819 F.2d 558, 560 (5th Cir. 1987); see 8 U.S.C. § 1105a(a)(4) (1970). However, a BIA finding regarding the "extreme hardship" requirement is reviewed under the more limited abuse of discretion standard. Hernandez-Cordero, 819 F.2d at 560. The burden of establishing eligibility for suspension of deportation is on the alien. Id.

To qualify for suspension of deportation, Mrs. Peters must demonstrate that she has been physically present in the United States for at least seven continuous years; that she is a person of good moral character; and that she is a person whose deportation would result in "extreme hardship" either to herself, or to a spouse, child, or parent who is an American citizen or a permanent

resident. 8 U.S.C. § 1254(a)(1) (1970). At the show cause hearing, the IJ determined that although Mrs. Peters was a person of good moral character, who had been in the United States for at least seven continuous years, Mrs. Peters would not suffer "extreme hardship" if deported to Korea. Because Mrs. Peters did not meet the three requirements for suspension of deportation, the IJ denied Mrs. Peters's application.

In her appeal to the BIA, Mrs. Peters argued that the IJ erred in determining that she would not suffer "extreme hardship" if she and her son were deported to Korea. In making a determination of "extreme hardship," the court must consider the following circumstances: age of the alien; family ties in the United States and abroad; length of residence in the United States; condition of health; economic and political conditions in the country to which the alien is returnable; financial status; business and occupation; the possibility of other means of adjustment of status; whether the alien is of special assistance to the United States or the community; immigration history; and position in the community. In re Anderson, 16 I & N Dec. 596, 597 (BIA 1978). The BIA has broad discretion to narrowly define "extreme hardship." Hernandez-Cordero v. United States INS, 819 F.2d at 561 (citing INS v. Jong Ha Wang, 450 U.S. 139, 101 S.Ct. 1027, 67 L.Ed.2d 123 (1981)).

At the hearing before the IJ, the INS produced evidence demonstrating that both Mrs. Peters and her son are young,[1] and in good health. Although Mrs. Peters has been employed as a custodian at the New Orleans airport since early 1990, and has paid income taxes, Mrs. Peters produced no evidence that she would be unable to secure employment in Korea. Mrs. Peters owns no property in the United States, and she has no significant ties to the community. Mrs. Peters's parents and siblings live in Korea, and according to the evidence, they appear to be financially stable. Furthermore, Mrs. Peters has never argued that she fears political persecution upon her return. After considering these facts, the IJ determined that Mrs. Peters would not suffer extreme hardship if required to return to Korea.

On appeal to the BIA, Mrs. Peters argued that the IJ failed to consider the effect that deportation would have on her son. At the show cause hearing, Mrs. Peters argued that her son would suffer extreme hardship if they were deported to Korea because he is mixed race, and he speaks very little Korean. However, the IJ determined that any hardship the deportation caused her son was irrelevant because her son was neither an American citizen nor a permanent alien. See 8 U.S.C. § 1254(a)(1) (1970). When the BIA reviewed the IJ's decision, the BIA noted that any difficulties Mrs. Peters's son experiences were relevant to the extent that such

[1]Mrs. Peters was born on February 24, 1955, and her son was born in Korea sometime in late 1980.

difficulties caused a hardship to Mrs. Peters. Although the BIA recognized that Mrs. Peters's son may endure some difficulties in adjusting to life in Korea, the hardships caused by the deportation did not rise to the level of "extreme hardship" as required by the statute. See INS v. Jong Ha Wang, 450 U.S. 139, 101 S.Ct. 1027, 67 L.Ed.2d 123 (1981)(refusing to find extreme hardship based on effect on children who could not speak Korean). After reviewing the decision of the BIA, we do not think that the BIA abused its discretion in coming to that conclusion.

IV

For the foregoing reasons, the decision of the Board of Immigration Appeals is

A F F I R M E D.