

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-4914
Summary Calendar

GILDARDO GARCIA-GARFIAS,

Petitioner,

versus

IMMIGRATION AND NATURALIZATION
SERVICE,

Respondent.

Petition for Review of an Order of the
Immigration and Naturalization Service
(A26 605 903)

(December 8, 1993)

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

PER CURIAM:*

The issue in this appeal concerns whether Mr. Garcia-Garfias or his spouse will suffer "extreme hardship" as defined by the Immigration and Nationality Act of 1952 if he is deported to Mexico. Because the Board of Immigration Appeals did not abuse its

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

discretion in determining that neither Mr. Garfias or his spouse would suffer extreme hardship, we affirm.

I

Gildardo Garcia-Garfias ("Garfias"), a native and citizen of Mexico, entered the United States illegally in 1976. He worked various jobs, and in 1984, he met Lilly K. Stamper. Garfias began living with Ms. Stamper in 1984, and, although they have never been formally married, they have considered themselves common law husband and wife since 1986. In June 1983, Garfias was issued an Order to Show Cause by the Immigration and Naturalization Service, charging that Garfias was deportable under the provisions of Section 241(a)(2) of the Immigration and Nationality Act for entry without inspections.¹ Garfias conceded deportability and applied for suspension of deportation under 8 U.S.C. § 1254. After a hearing, the Immigration Judge ("IJ") denied Garfias's application for suspension of deportation, although he granted a request for voluntary deportation. Garfias appealed the denial of suspension of deportation to the Board of Immigration Appeals ("BIA"). The BIA agreed with the IJ's holding, and dismissed the appeal. Garfias now appeals to this court, seeking review of the BIA's dismissal.

II

¹Although the INS issued the Order to Show Cause in June of 1983, for some unapparent reason, this Order was not brought before the Immigration Court until February 1989.

The sole issue in this appeal concerns whether the BIA properly dismissed Garfias'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 affect 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 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)). The burden of establishing eligibility for suspension of deportation is on the alien. Id.

To qualify for suspension of deportation, Garfias was required to demonstrate that he had been physically present in the United States for at least seven continuous years; that he was a person of good moral character; and that he was a person whose deportation would result in "extreme hardship" either to himself, or to a spouse, child, or parent who is an American citizen or a permanent

resident. 8 U.S.C. § 1254(a)(1) (1970). After the hearing, the IJ determined that although Garfias had resided in the United States for at least seven continuous years, Garfias did not demonstrate that he was a person of good moral character, or that he or his wife would suffer "extreme hardship" if he were deported to Mexico. Because Garfias did not meet two of the three requirements for suspension of deportation, the IJ denied his application.

In his appeal to the BIA, Garfias argued that the IJ erred in determining that his wife would not suffer "extreme hardship."² Garfias apparently concedes that the IJ's finding that Garfias himself would not suffer extreme hardship was proper. With respect to Ms. Stamper, Garfias introduced evidence that although she is "relatively young and gainfully employed," she suffers from high blood pressure. To maintain her blood pressure at a reasonable level, Ms. Stamper is required to take daily medication and to visit her physician on a regular monthly basis. Ms. Stamper

²The IJ also held that Garfias "has not met his burden of proof of affirmatively showing in this record that he has been a person of good moral character for the required period of seven years." Although the BIA's dismissal was based solely on a lack of extreme hardship, in his appeal to this court, Garfias argues only that the IJ erroneously held that there was no extreme hardship. Garfias now argues that because the BIA did not address the question of good moral character, the BIA implicitly found that Garfias met the "good moral character" requirement of the statute. We disagree. The BIA might have skipped the character discussion simply because it found Garfias ineligible for suspension of deportation because he failed to meet the "extreme hardship" requirement. As such, even if Garfias were successful in persuading this court that the BIA abused its discretion in finding no extreme hardship, he has not demonstrated that he meets all the requirements of the statute.

further testified that she had difficulties in the past finding a doctor who could manage her condition, and now that she has located a doctor who can provide effective treatment and in whom she has trust, she would suffer extreme hardship if she were required to move to Mexico with her husband. Further, she testified that if Garfias were deported to Mexico and she chose to remain in the United States, she would suffer extreme hardship from the separation. Although the IJ acknowledged that Ms. Stamper would be faced with a difficult choice if Garfias were deported, he concluded that she would not suffer a hardship that was substantially different from or more severe than that suffered by the ordinary alien who is deported. See Sanchez v. United States INS, 755 F.2d 1158, 1161 (5th Cir. 1985). Although we likewise acknowledge that Ms. Stamper is faced with a difficult decision, we do not find that the evidence presented was so compelling that no reasonable fact finder could fail to find that the requirements for relief were met. INS v. Elias-Zacarias, ___ U.S ___, 112 S.Ct. 812, 817 117 L.Ed.2d 38 (1992). Accordingly, we find that there was no abuse of discretion.

IV

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

A F F I R M E D.