IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 93-5100

Summary Calendar

NELSON SORIANO MUNAR,

Petitioner,

v.

IMMIGRATION AND NATURALIZATION SERVICE,

Respondent.

Petition for Review of an Order of the
Immigration and Naturalization Service
(A39-159-697)

(January 18, 1994)

Before KING, HIGGINBOTHAM and BARKSDALE, Circuit Judges.

PER CURIAM:[*]

Nelson Soriano Munar petitions this court for review of a decision of the Board of Immigration Appeals (the Board), which affirmed an immigration judge's denial of Munar's application for a waiver of deportation under 8 U.S.C. § 1182(c). We affirm the decision of the Board.

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 Pursuant to that Rule, the court has determined that this opinion should not be published.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

Nelson Soriano Munar, a citizen of the Philippines, entered the United States as an immigrant on February 22, 1985, and has since continuously resided here. On October 8, 1992, Munar was convicted in the state of Louisiana for possession of cocaine.

On December 3, 1992, the Immigration and Naturalization Service (INS) issued to Munar an Order to Show Cause why he should not be deported--specifically under 8 U.S.C. § 1251(a)(2)(B)(i), alleging that after entry into the United States Munar had been convicted for a crime related to a controlled substance (cocaine), and under 8 U.S.C. § 1251(a)(2)(A)(iii), alleging that after entry Munar had been convicted of an aggravated felony. During the course of Munar's deportation hearing before an immigration judge, the INS charged Munar with deportability on two additional grounds: (1) under 8 U.S.C. § 1251(a)(1)(A), alleging that Munar was an excludable alien at the time of entry because he was not in possession of a valid immigrant visa or other valid entry document; and (2) under 8 U.S.C. § 1251(a)(1)(A), alleging that Munar was an excludable alien at the time of entry because he had procured a visa, other documentation, or entry into the United States by fraud or by willful misrepresentation of a material fact concerning his entry. In support of these additional charges, the INS alleged that at the time of entry, Munar had presented a visa issued to him as an unmarried child of a fifth-preference immigrant,

pursuant to 8 U.S.C. § 1153(a)(8), but that he was in fact married to a woman named Cecilia Ramintuan.

The immigration judge found that only the charge that Munar was deportable for having been convicted of a violation relating to a controlled substance was supportable by evidence produced at Munar's deportation hearing. The judge then found Munar deportable on that charge, and scheduled a hearing on Munar's application for a waiver of deportation under 8 U.S.C. § 1182(c).

At the application hearing, Munar testified that he entered the United States as a 20-year-old immigrant on February 22, 1985. He also testified that he had cousins, aunts, and uncles living in California and that he had a girlfriend, a 52-year-old woman named Annie Lebleu, with whom he had been living in Rayne, Louisiana, since May 1991, and whom he wished to marry. Munar further stated that Lebleu is unemployed but collects social security payments because of her husband's death and that he has contributed to her support. He also testified that he had a wife and child in the Philippines, whom he has not seen since 1989 and whom he does not financially support, and that his father, sister, and two brothers also reside in the Philippines.

Concerning his employment history, Munar stated that he had been employed as a machine operator at a compact disc company in 1987, a computer assembler in 1988, a carnival ride operator from 1990 to 1991, and a roofer in 1992. He also testified that he had worked briefly in 1990 in the offshore oil industry with Lebleu's son, who was an engineer of a mud control company.

Furthermore, Munar stated that he returned to the Philippines in February 1989, where he remained until September of that year, and that he had had brief periods of unemployment between some of his jobs. Munar also testified that he had not served in the Armed Forces of the United States, owns no property in the United States, and has no business ties here.

Regarding his criminal history, Munar stated that he had been arrested in Louisiana for possession of cocaine. He explained, however, that he was not guilty of that offense, but that he had pleaded guilty on the advice of counsel in exchange for a three-year suspended sentence and five years of probation.

Lebleu also testified at the application hearing. She confirmed that she and Munar began living together in May 1991, and she stated that she and Munar wished to be married. She further stated that she is aware that Munar is still married and that steps would have to be taken to terminate Munar's marriage legally before they could be married.

Lebleu also testified that she has no income other than a monthly social security payment, which is soon to cease because the youngest of her nine children will be sixteen, and that she is dependent in part on Munar's income. However, she also testified that she is physically able to work and that if Munar were deported she would have to become employed.

Lebleu additionally explained that since she had known Munar, he had become a Christian. She also stated that Munar has

tried to live a decent life in the United States and that she would be hurt if he would have to leave.

The immigration judge determined that Munar was statutorily eligible for a waiver under 8 U.S.C. § 1182(c) but that he did not merit such discretionary relief. The judge found that Munar failed to demonstrate "even substantial equities" to show that he merited a discretionary waiver to allow him to stay in the United States. The judge also noted that although Munar denied his guilt for the possession-of-cocaine offense which formed the basis of the INS' Order to Show Cause, he was not permitted to go behind a court record to determine Munar's guilt or innocence. Further, the judge found that because Munar now denied his guilt, he offered no evidence of rehabilitation.

The immigration judge then denied Munar's application for a waiver under 8 U.S.C. § 1182(c). Munar appealed this denial to the Board, who affirmed the immigration judge's decision on June 18, 1993. Munar thereafter filed a timely petition for review in this court.

II.

Standard of Review

We review the Board's denial of relief under 8 U.S.C. § 1182(c) for an abuse of discretion. Villarreal-San Miguel v. INS, 975 F.2d 248, 250 (5th Cir. 1992); Ghassan v. INS, 972 F.2d 631, 634 (5th Cir. 1992), cert. denied, 113 S. Ct. 1412 (1993). The Board's denial of § 1182(c) relief will be upheld, unless its

decision is "'arbitrary, irrational, or contrary to law.'" Villarreal-San Miguel, 975 F.2d at 250 (quoting Citizens to Preserve Overton Park, Inc. v. Volpe, 401 U.S. 402, 416 (1971)); Diaz-Resendez v. INS, 960 F.2d 493, 495 (5th Cir. 1992). Thus, our review is "exceedingly narrow." Ashby v. INS, 961 F.2d 555, 557 (5th Cir. 1992).

Discussion

Pursuant to § 1182(c), a lawful permanent resident alien who has maintained a domicile in the United States for seven consecutive years may, in the Attorney General's discretion, be permitted to continue residing in this country notwithstanding his deportability under the Immigration and Nationality Act.[1] Given that the grant of a waiver of deportation under § 1182(c) is a "matter of grace" and is comparable to a "Presidential pardon," the Board has broad discretion to determine what it will consider as favorable and adverse factors in determining whether to grant relief under § 1182(c). Ashby, 961 F.2d at 557 n.3; Perales v. Casillas, 903 F.2d 1043, 1051 (5th Cir. 1990).

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[1] Section 1182(c) provides in pertinent part:

> Aliens unlawfully admitted for permanent residence who temporarily proceeded abroad voluntarily and not under an order of deportation, and who are returning to a lawful unrelinquished domicile of seven consecutive years, may be admitted in the discretion of the Attorney General . . . .

Although on its face this statute does not seem applicable to the instant case, the scope of this statute has been extended to include all persons who were lawfully admitted for permanent residence, have maintained a lawful unrelinquished domicile in the United States for seven consecutive years, and merit a favorable exercise of discretion. Ashby v. INS, 961 F.2d 555, 557 n.2 (5th Cir. 1992).

Further, § 1182(c) "does not provide an indiscriminate waiver for all who demonstrate eligibility for such relief." Ashby, 961 F.2d at 557. Rather, an alien must show that he or she is eligible for such relief and also demonstrate to the Board's satisfaction that a favorable exercise of discretion is warranted. Id.

In making its determination of whether an applicant alien is eligible for § 1182(c) relief, the Board balances the adverse factors of record evidencing the alien's undesirability as a permanent resident against favorable factors and social and humane considerations. Factors which the Board considers in an alien's favor include family ties, duration of residency in the United States, hardship to the alien and his family if deportation were ordered, service in the Armed Forces, business ties to the United States, community service, and employment history. Villareal-San Miguel, 975 F.2d at 251 (quoting Diaz-Resendez v. INS, 960 F.2d 493, 495-96 (5th Cir. 1992)); In re Buscemi, 19 I. & N. Dec. 628, 633 (BIA 1988). Adverse factors which the Board considers include the nature and underlying circumstances of the deportation ground at issue, the presence of additional significant violations of the immigration laws, the existence of a criminal record--and if such a record exists, the nature, recency, and seriousness of that record--and the presence of other evidence indicative of the applicant alien's bad character or undesirability as a permanent resident of the United States. Villareal-San Miguel, 975 F.2d at 251; Buscemi, 19 I. &

N. Dec. at 633. Furthermore, an alien with a criminal record who applies for § 1182(c) relief will ordinarily be required to make a showing of rehabilitation before relief will be considered. Villarreal-San Miguel, 975 F.2d at 251; Buscemi, 19 I. & N. Dec. at 635.

The record shows that Munar was convicted in 1992 in Louisiana for possession of cocaine. Although Munar testified that he was not guilty of that offense, neither the Board nor this court can go behind Munar's conviction to assess its validity. See Howard v. INS, 930 F.2d 432, 435-36 (5th Cir. 1991); Zinnanti v. INS, 651 F.2d 420, 420 (5th Cir. 1981) (per curiam). The Board also determined that Munar had not made a convincing showing of his rehabilitation.

Moreover, the record indicates that while Munar has family ties to the United States, those ties involve only relatively distant relations, i.e., aunts, uncles, and cousins, who reside in California and with whom Munar has not shown a particularly close relationship. All of Munar's immediate family relations, on the other hand, live in the Philippines.

Additionally, Munar's employment record reflects that he has changed jobs frequently and that he has been unemployed on occasions. The record also shows that Munar has not served in the Armed Forces, owns no property in this country, and has no business ties here.

Munar offers as factors in his favor his relationship with Lebleu, the fact that he and Lebleu wish to marry, and that he

has contributed to Lebleu's support. However, by Lebleu's own testimony she is in good health and could look for employment--and in fact would if Lebleu were deported. Lebleu also testified that seven of her nine children are adults and live near her. Thus, there is no indication that her adult children could not help support her if necessary or that Munar is essential to her continued support. The record also indicates that Munar is still married to his wife in the Philippines and that Munar would have to divorce her before he could marry Lebleu. Further, assuming arguendo that Munar's deportation would be a severe hardship to Lebleu, the Board has not recognized hardship to anyone but to an applicant alien and his family as a factor to be considered in the exercise of its discretion. Cf. INS v. Hector, 479 U.S. 85, 88 (1986) (per curiam) ("Because we find the plain language of the statute so compelling, we . . . hold that the Board is not required under [8 U.S.C. § 1254(a)(1)] to consider the hardship to a third party other than the spouse, parent, or child . . . .").

The Board reviewed the factors both in favor of and against the granting of a waiver of deportation for Munar, and its decision to affirm the immigration judge's denial of discretionary relief is well-founded in the record. We thus determine that the Board did not abuse its discretion in denying Munar § 1182(c) relief.

III.

For the foregoing reasons, we AFFIRM the decision of the Board.