UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

No. 93-5107

(Summary Calendar)

SAMSON O. AGBOSASA,

Petitioner,

versus

IMMIGRATION AND NATURALIZATION SERVICE,

Respondent.

Petition for Review of an Order
of the Immigration and Naturalization Service
(A29 856 807)

(April 26, 1994)

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

EMILIO M. GARZA, Circuit Judge:[*]

Samson Agbosasa, a native and citizen of Nigeria, appeals a final order of deportation of the Board of Immigration Appeals (the BIA") which denied his applications for suspension of deportation, asylum, and withholding of deportation, as well as his motion to reopen deportation proceedings. Finding no merit to any of Agbosasa's arguments on appeal, we affirm.

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[*] Local Rule 47.5.1 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.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

In 1979, Agbosasa entered the United States as a non-immigrant visitor and has remained ever since. In January 1991, he was convicted of filing false income tax returns in violation of 18 U.S.C. § 287, and for using a false social security number in violation of 42 U.S.C. § 408. In January 1992, the Immigration and Naturalization Service ("INS") issued an Order to Show Cause charging Agbosasa to be deportable for having entered without inspection and for having been convicted for two crimes involving moral turpitude. Thereafter, Agbosasa applied for asylum and withholding of deportation.

The immigration judge denied Agbosasa's applications for asylum and withholding of deportation, and found Agbosasa deportable on the basis of both charges. In November 1992, the BIA upheld Agbosasa's deportability because Agbosasa failed to sustain his statutory burden of proving the time, date, and manner of entry. The BIA further upheld the immigration judge's determination that Agbosasa was not eligible for asylum or withholding of deportation. The BIA remanded, however, for the immigration judge to determine whether there existed a pending appeal from Agbosasa's criminal convictions. Because of the possibility of a pending criminal appeal, the BIA also remanded to allow the immigration judge to consider Agbosasa's eligibility for suspension of deportation and voluntary departure.

On remand, the immigration judge determined that Agbosasa's appeal from his criminal convictions was still pending.[1] The immigration judge further found that Agbosasa was not eligible for suspension of deportation or voluntary departure. Agbosasa appealed to the BIA, which upheld the immigration judge's decision. The BIA also denied Agbosasa's motion to reopen deportation proceedings. Agbosasa's petition for review is now before us.

II

A

Agbosasa first contends that the BIA erred in denying his application for suspension of deportation. "[E]ligibility for a suspension of deportation is only available to an alien who: (1) has been physically present in the United States for a continuous period of at least seven years immediately preceding the application; (2) is a person of good moral character; and (3) is a person whose deportation would, `in the opinion of the Attorney General,' result in `extreme hardship' to the alien or to his spouse, parent, or child, who is a citizen of the United States or an alien lawfully admitted for permanent residence." *Hernandez-Cordero v. INS,* 819 F.2d 558, 560 (5th Cir. 1987) (en banc) (quoting 8 U.S.C. § 1254(a)). In denying Agbosasa's request for suspension of deportation, the BIA considered the harm Agbosasa would suffer from being separated from his family, as well as the

[1] The First Circuit recently affirmed Agbosasa's convictions. *See United States v. Agbosasa,* 92-1747 (1st Cir. Feb. 11, 1994).

less-favorable economic climate in Nigeria. The BIA ultimately found that Agbosasa had not established extreme hardship.

Our substantive review of the BIA's finding of no extreme hardship is exceedingly narrow, such that "we are entitled to find that the BIA abused its discretion only in a case where the hardship is uniquely extreme, at or closely approaching the outer limits of the most severe hardship the alien could suffer and so severe that any reasonable person would necessarily conclude that the hardship is extreme." *Id.* at 563. Our review of the record reveals that the hardships facing Agbosasa were not uniquely extreme as to warrant suspension of deportation. We therefore hold that the BIA did not abuse its discretion in finding no extreme hardship.

We also note that the BIA satisfied its procedural responsibilities by considering all the relevant factors of an "extreme hardship" determination, both individually and collectively. *See* Record on Appeal vol. 1, at 5 (BIA decision) ("Accordingly, we do not find that any of these factors [separation from family and economic conditions in Nigeria] demonstrate that the respondent will suffer extreme hardship within the meaning of [the statute]. Nor do we find that the respondent has demonstrated an aggregate of facts which together amount to extreme hardship."); *see also Sanchez v. INS,* 755 F.2d 1158, 1160 (5th Cir. 1985) (stating that the procedural review of an "extreme hardship" determination "is limited to ascertaining whether *any* consideration has been given" by the BIA to the factors establishing "extreme

hardship."). We further note that the BIA did not abuse its discretion by disregarding Agbosasa's claims of persecution. *See Farzad v. INS,* 802 F.2d 123, 126 (5th Cir. 1986) ("[T]he [BIA] does not abuse its discretion when it concludes that claims of political persecution have no relationship to determining whether `extreme hardship' exists, which would warrant suspension of deportation.").

B

Agbosasa next contends that the BIA erred in not granting him asylum and withholding of deportation. To qualify for asylum, an alien must show that persecution on account of race, religion, nationality, membership in a particular social group, or political opinion, "is a reasonable possibility, or that the applicant has a `well-founded' fear of persecution." *Rivera-Cruz v. INS,* 948 F.2d 962, 966 (5th Cir. 1991). To qualify for withholding of deportation, an alien must show a "clear probability" of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. *Id.*

Agbosasa attempted to establish a well-founded fear of persecution on the following bases: (1) that his brother and father had been poisoned in Nigeria; (2) that he had corresponded with many human rights activists in Nigeria who have since been imprisoned; and (3) that members of the Nigerian government had visited his mother's home in Nigeria to inquire when Agbosasa would be deported. The BIA held that none of those bases demonstrated a well-founded fear of persecution on account of an enumerated ground. Since Agbosasa did not show a well-founded fear of

persecution, the BIA decided that he also had not met the higher burden for withholding of deportation.

"We review the [BIA]'s factual findings [such as well-founded fear and clear probability of persecution] to determine if they are supported by substantial evidence." *Rojas v. INS,* 937 F.2d 186, 189 (5th Cir. 1991) (citing 8 U.S.C. § 1105a(a)(4)). "The substantial evidence standard requires only that the [BIA]'s conclusion by based upon the evidence presented and be substantially reasonable." *Id.* In failing to find a well-founded fear of persecution, the BIA noted that Agbosasa had not offered any credible evidence linking any of his cited bases for asylum with an enumerated ground. For example, even assuming that his brother and father had been poisoned, Agbosasa failed to present credible evidence that the poisonings constituted persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. Agbosasa's own testimony indicated that the poisonings arose over a land dispute. Similarly, Agbosasa failed to present any credible evidence that he will be persecuted on account of his political opinions for having corresponded with now imprisoned human rights activists, or persecuted on account of any other enumerated ground upon his deportation to Nigeria.[2] We therefore hold that the BIA's decision not to grant Agbosasa asylum was supported by substantial evidence. Furthermore, the BIA correctly held that the failure of Agbosasa's

[2] The evidence linking Agbosasa's bases for asylum with one of the enumerated grounds consisted of Agbosasa's testimony, which the immigration judge and the BIA found not credible.

asylum claim implies the failure of his claim for withholding of deportation. *See Rivera-Cruz,* 948 F.2d at 969 ("Rivera's failure to establish a `well-founded fear' of persecution necessarily implies that he is unable to satisfy the more demanding standard of `clear probability' of persecution.").

C

Agbosasa also contends that the BIA abused its discretion by denying his motion to reopen deportation proceedings. "The granting of a motion to reopen is . . . discretionary, and the Attorney General has `broad discretion' to grant or deny such motions. Accordingly, we generally review the BIA's denial of a motion to reopen only for abuse of discretion." *Pritchett v. INS,* 993 F.2d 80, 83 (5th Cir.) (citing *INS v. Doherty,* 112 S. Ct. 719, 724-25 (1992)), *cert. denied,* 114 S. Ct. 345 (1993).

Agbosasa sought to reopen deportation proceedings on the basis of two documents. The first document, purportedly from the Nigerian Committee for Defense of Human rights, lists Agbosasa as a member since 1987. The second document is a letter describing the Nigerian government's attempt to get the author of the letter to implicate Agbosasa as a subversive. Because the BIA correctly determined that those documents failed to establish a prima facie case for asylum relief))i.e., the documents did not demonstrate a well-founded fear of persecution on account of an enumerated ground))we conclude that the BIA did not abuse its discretion by denying Agbosasa's motion to reopen. *See Doherty,* 112 S. Ct. at

725 (stating that the BIA might deny a motion to reopen for the failure to establish a prima facie case for the relief sought).

D

Agbosasa raises several other arguments which we summarily address. He first argues that the immigration judge abused his discretion by denying his motion for change of venue. Because Agbosasa never showed good cause for a change of venue, we hold that no abuse of discretion occurred. *See Matter of Rahman,* Int. Dec. 3174 (BIA 1992) (stating that an immigration judge's discretion to change venue in deportation proceedings is subject to the existence of good cause). Agbosasa next argues that the BIA abused its discretion by denying his application for voluntary departure. Based upon Agbosasa's failure to establish "good moral character" as required by statute,[3] we hold that no abuse of discretion occurred.[4] Agbosasa further argues that the BIA erred in rejecting his claim that he was denied counsel during the initial hearing before the immigration judge. The record belies

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[3] "The Attorney General may, in his discretion, permit any alien under deportation proceedings, . . . to depart voluntarily from the United States at his own expense in lieu of deportation if such alien shall establish to the satisfaction of the Attorney General that he is, and has been, a person of good moral character for at last five years immediately preceding his application for voluntary departure under this subsection." 8 U.S.C. § 1254(e) (1988).

[4] The immigration judge and the BIA properly relied upon the conduct underlying Agbosasa's then-pending criminal convictions in concluding that Agbosasa had failed to establish a good moral character. *See Parcham v. INS,* 769 F.2d 1001, 1005 (4th Cir. 1985) ("Evidence of an alien's conduct, without a conviction, may be considered in denying the discretionary relief of voluntary departure."); *see also Aalund v. Marshall,* 461 F.2d 710, 713 (5th Cir. 1972).

Agbosasa's claim, as it shows that the immigration judge granted a number of continuances so that Agbosasa could obtain counsel. Lastly, Agbosasa argues that the BIA erred in rejecting his due process claim, based on an alleged procedural defect with the Order to Show Cause. Because Agbosasa neither claimed nor demonstrated prejudice from the alleged defect, we conclude that no error occurred. *See Diaz-Soto v. INS,* 797 F.2d 262, 264 (5th Cir. 1986) (rejecting due process claims based on procedural defect in Order to Show Cause where petitioner neither claimed nor demonstrated any prejudice resulting from the defect).

III

For the foregoing reasons, we AFFIRM.