IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 93-5242

Summary Calendar

ISAI LOPEZ-RODRIGUEZ,

Petitioner,

v.

IMMIGRATION AND NATURALIZATION SERVICE,

Respondent.

Petition for Review of an Order of the
Immigration and Naturalization Service
(INS A 28 578 535)

(March 24, 1994)

Before KING, DUHÉ, and BARKSDALE, Circuit Judges.

PER CURIAM:[*]

Petitioner Isai Lopez-Rodriguez ("Lopez") admitted deportability under 8 U.S.C. § 1251(a)(2) (1988) (current version at 8 U.S.C. § 1251 (Supp. IV 1992)),[1] but requested affirmative

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

[1] Section 1251 of Title 8 of the United States Code was amended by the Immigration Act of 1990. The reorganized section 1251 is inapplicable to aliens who, like Lopez, received notice of their deportation proceeding before March 1, 1991. Section 602(d) of Pub. L. No. 101-649, 104 Stat. 5082 (1990).

relief in the form of political asylum. An immigration judge found that Lopez had not met the requirements for showing that he was entitled to asylum or withholding of deportation and was not eligible for voluntary departure. Lopez appealed to the Board of Immigration Appeals ("BIA"), which dismissed his appeal. The BIA also denied his request to reopen his proceeding. Finding no reversible error, we affirm the order of the BIA.

I. Background

Lopez is a native and citizen of Honduras. He is an agricultural worker with a sixth-grade education and speaks little English. Although he asserts that he is not involved in any particular political party in Honduras, he claims that his attendance at a political meeting has given officials in the Honduran government the impression that he is a subversive.

Two of Lopez' brothers have been incarcerated by Honduran authorities, one for falsified charges involving an alleged theft of a gun, and one for insisting on his right to be discharged from the army after having served his requisite three-year term. According to Lopez, the brother jailed for stealing the firearm is extensively involved in a national peasant organization that has decried the federal government, and he believes that his brother was wrongfully prosecuted by the Direccion Nacional de Investigaciones (the "DNI").

Lopez' political problems began in late 1985, when he attended a political rally in San Pedro Sula upon an invitation from a college professor, who had a store near his brother's

home. He testified at his asylum hearing that there were about fifteen to twenty people present at the meeting and that they discussed "politics" and "the political system." Although he claimed not to have understood the conversation since he "did not know or take part in anything like that," Lopez stated at his asylum hearing that he "took part" in the rally and subsequently elaborated in his Declaration in Support of Motion to Reopen (the "declaration") that he talked about

> how unfair it was that the scholarships were given only to the rich, and poor students couldn't get them. I also remember saying that it was unfair that only poor men had to perform military service, and the rich did not. I also complained about how the Turks were running the business of the country, while the Hondurans were just getting poorer and poorer all the time. . . . In any event, [my statements] were enough to have gotten me labelled as a subversive if there had been a government spy there, as it later turned out that there apparently was.

Lopez claimed that, after members of the group learned that a government spy was present at the meeting, he was advised to leave before trouble began.

After he left the meeting, Lopez asserts that, "[it] was being said that . . . the people that had attended [the political rally] was [sic] strictly Communist, they were subversives . . . ." Later that night, he heard gunshots in San Pedro and subsequently learned that one of the group, a man named "Martin," had been killed by being shot in the chest by military commandos. Lopez indicated that Martin was a leader of the group at the meeting, who had previously been a friend of Lopez' brother.

Lopez fled to his grandmother's house and subsequently to the mountains, where one of his other brothers lived, to hide from the danger he perceived. His brothers apparently told him he was a "dummy" and that he had brought his own problems upon himself for having attended the meeting. After his father died, he left for Guatemala for a brief period, but later returned to the Honduran mountains where he lived by himself as a recluse.

While living in the mountains, Lopez made "clandestine" trips to visit his brothers, who informed him that the authorities were still looking for those who had attended the rally and that they had captured two more. He claims that his brothers warned him that his life was in danger. Consequently, in April of 1988, Lopez left Honduras and ended up in the United States.

Lopez entered the United States without inspection in August of 1988, near Brownsville, Texas. He was apprehended by I.N.S. agents the next day and was served with an order to show cause why he should not be deported from the United States. Lopez filed the order in the Immigration Court to initiate deportation proceedings and first appeared before the court on December 15, 1988. The immigration judge ("IJ") advised him of his right to be represented by counsel and recessed the hearing for three weeks in order for him to obtain a lawyer. Although the IJ continued the hearing for three weeks, Lopez represented himself at the proceedings on January 10, 1989. He admitted the allegations of fact made by the government and conceded

deportability. He declined to appoint a country for deportation in the event he was deported. The court then asked Lopez if he wished to apply for asylum "based on a fear of returning to your own country," and Lopez responded affirmatively. The IJ gave him a written application form and continued the hearing so that Lopez could commence asylum proceedings.

On June 28, 1989, after several more continuances, the IJ conducted a hearing on the merits of Lopez' asylum application. The IJ again recommended at one of the recessed hearings that Lopez obtain a lawyer, but he was apparently unable to do so and continued to represent himself at the June 28 hearing. When given the choice between making a statement and having the court ask him questions, Lopez chose to have the court interrogate him. The facts set forth above were developed during this questioning. The IJ pressed on several occasions for specifics as to Lopez' persecutors. Lopez was quite vague as to who in Honduras he believed was attempting to find him. Lopez claimed that he feared both the military ("dressed right now in green") and also

> the ones in civilian clothes because they are the ones who work with the federal investigation department and once they get to a person and they investigate the person they're liable to make up anything and they'll take the person and before you know it that person is already convicted of crimes and immediately they'll go ahead and kill that person also.

The IJ conceded that he knew little of Honduran politics and the general condition of the country.

After the questioning was complete, the IJ issued an oral decision, finding that deportability had been established under 8

U.S.C. § 1251(a)(2) (for entering this country without inspection), and denying Lopez' claim for asylum and withholding of deportation. Specifically, the IJ found that Lopez had demonstrated a genuine belief that he feared persecution on account of his political beliefs, but failed to prove that the fear was "well-founded" -- i.e., that a reasonable person in his circumstances would have similarly feared persecution. The IJ expressed his belief that the government would most likely retaliate against the leaders, like "Martin," rather than against poor farm workers, like Lopez, who merely attended one meeting. He also concluded that there was no indication that anyone from the government had questioned Lopez' family about his location. Since Lopez had testified that he did not "at present" have the funds to pay for his departure, the IJ also denied him voluntary departure, and Lopez was ordered deported to Honduras.

Lopez then appealed the decision to the BIA, which dismissed his appeal. He additionally requested that his case be reopened and that the court entertain a de novo hearing at which he could present evidence on points into which the IJ had not inquired at the hearing, especially to establish that his fear of persecution was "well founded." Lopez also sought to reopen the proceedings so that he could request voluntary departure, asserting that he had by then obtained the necessary funds to pay for his egress. The BIA denied his motion, and Lopez filed a timely petition for review with this court.

II. Analysis

Lopez contends primarily that the IJ erred in declining to inform him that he had the burden of proving that his fears of persecution in Honduras were "well-founded" in order to obtain asylum, in neglecting to ask questions directed at determining whether his fears were in fact "well-founded," and then in concluding that Lopez had failed to meet his burden of proof on this critical element. He also asserts that this court should review the IJ's decision directly in this case since it is not clear that the BIA applied a de novo standard in evaluating the IJ's conclusions of fact. Instead, Lopez argues, the BIA accorded deference to the IJ's findings, and thus this court can reach the merits of the IJ's decision. Lopez also claims that the BIA abused its discretion in denying his motion to reopen his proceedings to introduce additional evidence in support of his asylum request. Finally, Lopez asserts error in the BIA's failure to reopen his proceedings so that he may now apply for voluntary departure, having obtained the funds to do so.

A. Standards of Review

Although this court reviews only the judgment of the BIA, it will consider the "errors and other failings" of the IJ "if they have some effect on the [BIA's] order." Rivas-Martinez v. INS, 997 F.2d 1143, 1146 (5th Cir. 1993). Lopez argues that the BIA failed to undertake a de novo review of the IJ's decision and concludes that this court is therefore obliged to review the IJ's decision as well. Yepes-Prado v. INS, 10 F.3d 1363, 1366-67 (9th

Cir. 1993) (If BIA decision did not review IJ's rulings de novo and appeared to apply a deferential test, court of appeals will review the IJ's decision.); cf. Ortiz-Salas v. INS, 992 F.2d 105, 107-08 (7th Cir. 1993) (BIA abuses discretion in not establishing fixed standard of review, proceeding at times de novo and at times on substantial evidence standard.); Coriolan v. INS, 559 F.2d 993, 997-98 (5th Cir. 1977) (Where BIA's decision is unclear, IJ's decision is also considered.). We do not find support for Lopez' position in these cases. In the case at bar, unlike Yepes-Prado[2] and Ortiz-Salas,[3] the BIA did not intimate that it was reviewing the IJ's decision under a deferential standard. Instead, it gave every indication that its review was de novo.[4] As a consequence, any errors made by the IJ will be

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[2] In Yepes-Prado v. INS, the Ninth Circuit noted that the BIA had framed the issue before it as being "whether the IJ had **abused his discretion** in denying [the petitioner] relief." 10 F.3d 1363, 1366 (9th Cir. 1993) (emphasis added). The BIA's conclusion also indicated that it was according deference to the IJ's findings. Id. at 1366-67. Review of the IJ's decision was therefore warranted. Id. at 1367 ("Where the BIA's review is for an abuse of discretion, the decision is left to the IJ, subject to only limited oversight.") (citing Ortiz-Salas v. INS, 992 F.2d 105, 108 (7th Cir. 1993)).

[3] In Ortiz-Salas v. INS, the BIA affirmed the ruling of the IJ "on the basis that the immigration judge had not abused his discretion" in denying relief. 992 F.2d 105, 107-08 (7th Cir. 1993).

[4] For example, the BIA specifically held as follows:

> Upon reviewing the evidence which [Lopez] has presented in support of his asylum request, **we find** that he has not met his burden of establishing either a well founded fear of persecution or a clear probability of persecution in returning to Honduras, nor has he suffered persecution at any time in the past.

rendered harmless. Yepes-Prado, 10 F.3d at 1366 (citations omitted). Moreover, we do not find the BIA's order in this case to be unclear as was the one reviewed in Coriolan.[5] Accordingly, we review the decision of the BIA under the standards set forth below.

This court considers the BIA's conclusions that an alien is not eligible for withholding of deportation or for consideration for asylum only to determine whether the findings are supported by substantial evidence. Adebisi v. INS, 952 F.2d 910, 912 (5th Cir. 1992); Castillo-Rodriguez v. INS, 929 F.2d 181, 182-83 (5th Cir. 1991). Therefore, we will reverse the decision of the BIA only if the facts presented by Lopez are such that a reasonable person would have to conclude that the BIA's decision was incorrect. INS v. Elias-Zacarias, 112 S. Ct. 812, 815 (1992); Castillo-Rodriguez, 929 F.2d at 184. In order for an applicant to obtain reversal of a decision of the BIA, he must "show that the evidence he presented was so compelling that no reasonable factfinder could fail to find the requisite fear of persecution." Elias-Zacarias, 112 S. Ct. at 815. The BIA's interpretations of

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(emphasis added).

[5] In that case, the BIA decided only that the aliens "had failed to show a well-founded fear that their lives or freedom would be threatened in Haiti on account of their race, religion, nationality, membership in a particular social group, or political opinion." Coriolan v. INS, 559 F.2d 993, 997 (5th Cir. 1977). Thus, this court found it appropriate to look to the decision of the IJ "who first considered petitioner's case [and] wrote a substantial opinion setting out his grounds for decision." Id. at 998.

law, by contrast, are reviewed de novo. Rivas-Martinez, 997 F.2d at 1146.

With respect to Lopez' challenge to the BIA's denial of reopening, we note that the decision of whether to reopen an alien's deportation proceedings to allow additional evidence is discretionary with the BIA, and this court will not disturb its ruling absent an abuse of discretion. INS v. Abudu, 485 U.S. 94, 106-07 (1988).

B. Extent of the Immigration Judge's Duty to Advise

Lopez first contends that the immigration judge erroneously failed to advise him of the legal requirements necessary for him to obtain asylum. He argues that the "meaningful" notice required to be given an alien of his right to apply for asylum and for withholding of deportation[6] includes notice of each of the elements of the legal standards involved in the proceeding, citing to North Alabama Express, Inc. v. United States, 585 F.2d 783, 787 (5th Cir. 1978) (Where notice is required, it must "reasonably apprise any interested person of the issues involved in the proceeding."), and Intercontinental Indus., Inc. v. American Stock Exch., 452 F.2d 935, 941 (5th Cir. 1971) (holding that notice must reasonably apprise the parties of the issues in the hearing), cert. denied, 409 U.S. 842 (1972). We disagree.

[6] See 8 C.F.R. § 242.17 (providing that an immigration judge must advise an alien of his or her eligibility to apply for asylum and must make available the appropriate application forms); see also Nunez v. Boldin, 537 F. Supp. 578, 586 (S.D. Tex. 1982), appeal dismissed, 692 F.2d 755 (5th Cir. 1982) (Notice of the right to apply for asylum must be given at a "meaningful" time and in a "meaningful" manner).

The relevant regulations oblige an IJ generally to inform an alien of his eligibility to apply for relief from deportation if the alien expresses a fear of persecution or harm upon returning to his country and to make available the appropriate application forms. 8 C.F.R. § 242.17(a) & (c). Nowhere in these regulations, or in other pertinent authorities, do we find an additional requirement that the asylum applicant be advised of the legal standards and evidentiary burdens involved in obtaining such relief. Nor can such we read such a requirement into the due process directive that notice be "meaningful." The notice required to be given to Lopez was simply notice of the **right** to apply for the **remedy** of asylum. See Nunez v. Boldin, 537 F. Supp. 578, 586 (S.D. Tex. 1982), appeal dismissed, 692 F.2d 755 (5th Cir. 1982). The IJ asked Lopez if he wanted to apply for asylum based upon "a fear of returning to [his] own country," continued the hearing so that Lopez could do so, and gave him a written application for his completion. The court also advised him of his right to retain an attorney and gave him additional time in which to do so. The IJ then conducted a hearing on the asylum application during Lopez' deportation hearing. It is clear that Lopez had "meaningful" notice of his right to pursue affirmative relief from deportation, that he understood this right, and that he pursued the remedy. Neither due process nor the relevant authorities require more.

C. The Reasonableness of Lopez' Fear of Persecution

Lopez next argues that the BIA erred in finding that he failed to demonstrate a well-founded fear of persecution. He contends that its finding was contaminated by the application of incorrect legal standards, the immigration judge's failure to develop pertinent evidence, and a general mischaracterization of, or failure to understand, the testimony. We address each argument in turn.

1. The legal standard for asylum

In order to establish eligibility for asylum, Lopez must show that he is unable or unwilling to return to Honduras "because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion." 8 U.S.C. § 1101(a)(42). "To prove the existence of a well-founded fear of persecution, the alien must demonstrate that a reasonable person in the same circumstances would fear persecution if deported." Castillo-Rodriguez, 929 F.2d at 184. He must also show that this fear is based upon one of the five enumerated factors. Id. The BIA has proffered a four-part test for determining whether an alien has established a well-founded fear of persecution:

> (1) the alien possesses a belief or characteristic a persecutor seeks to overcome in others by means of punishment of some sort; (2) the persecutor is already aware, or could easily become aware, that the alien possesses this belief or characteristic; (3) the persecutor has the capability of punishing the alien; and (4) the persecutor has the inclination to punish the alien.

Matter of Mogharrabi, 19 I&N Dec. 439, 441-42 (BIA 1987) (emphasis added).

In the case at bar, the BIA recited the Mogharrabi test and concluded that, although Lopez had demonstrated a genuine fear of persecution for his political beliefs, his fear was not well-founded:

> [Lopez'] asylum claim is based primarily upon his having attended a political meeting at a city other than where he lived. As noted above, [Lopez] did not know any of the other twenty persons at the meeting, was unaware of the purpose of the meeting, and did not know the person who was killed or who shot him. There is no indication that the persons who killed one of the participants ever questioned anyone regarding [Lopez'] whereabouts. There is also no indication of any mistreatment or risk of harm to [Lopez] by these persons. Therefore, it does not appear that the respondent has a well-founded fear of persecution on any of the enumerated grounds.

Lopez' primary argument, however, is that the **IJ** applied the wrong standard for determining whether a belief in persecution was "well-founded." Specifically, Lopez claims that the IJ improperly required him to prove that it was "more likely than not" that he would be persecuted upon return to Honduras even though that more stringent evidentiary standard had been abrogated by INS v. Cardoza-Fonseca, 480 U.S. 421, 449-50 (1987) (holding that Congress did not intend to restrict eligibility for asylum only to those who could prove that it is more likely than not that they will be persecuted if deported). Rather, as Lopez correctly points out, he was only required to show that a reasonable person in his circumstances would have feared persecution. Castillo-Rodriguez, 929 F.2d at 184. Lopez

believes that this error was carried through the BIA proceedings since the BIA failed either to apply the correct legal standard or to exercise plenary review over the IJ's findings that he contends are implausible.

As discussed above, we find that the BIA reviewed the IJ's order de novo, and thus any errors made by the IJ were rendered harmless. Yepes-Prado, 10 F.3d at 1366 (citations omitted). Accordingly, we review the decision of the BIA. Castillo-Rodriguez, 929 F.2d at 183. The BIA specifically recited the correct Mogharrabi test and evaluated the evidence in accordance with those standards. Although it did not specifically match its factual findings to the four parts of the Mogharrabi test, the BIA adequately set forth its view of the evidence and arguments presented and supported its ultimate conclusion that Lopez had not demonstrated a well-founded fear of persecution. See, e.g., Osuchukwu v. INS, 744 F.2d 1136, 1142-43 (5th Cir. 1984) ("What is required is merely that [the BIA] consider the issues raised, and announce its decision in terms sufficient to enable a reviewing court to perceive that it has heard and thought and not merely reacted.").

2. The immigration judge's development of the evidence at Lopez' deportation hearing

Lopez next claims that he relied to his evident detriment upon the immigration judge to develop the evidence on his asylum claim. He asks this court to create a duty on behalf of an IJ as follows:

> Where the judge volunteers to allow a pro se asylum applicant to proceed in question and answer format, with the judge asking the questions, the judge must develop the facts necessary to determine his status under the correct legal standard.

Lopez cites to a line of authority requiring judges to "see that the facts are clearly and fully developed" in support of his position. E.g., Matter of K-H-C, 5 I&N Dec. 312, 314 (BIA 1953) (quoting NLRB v. Bryan Mfg., 196 F.2d 477 (7th Cir. 1952)); Rivas-Martinez, 997 F.2d at 1146.

We cannot conclude that the IJ had a duty to develop the facts necessary to prove Lopez' case. In our view, the imposition of such an obligation would render an immigration judge a de facto attorney for the alien and would violate the longstanding evidentiary rule that it is the applicant's burden to show that he has a "well-founded fear of persecution." See Ganjour v. INS, 796 F.2d 832, 836 (5th Cir. 1986). Indeed, an asylum applicant has the right to obtain counsel to represent him in order to insure that he complies with all of the relevant legal requirements and makes the proper evidentiary showings. See, e.g., 8 U.S.C. § 1262(b)(2).

The IJ's duty was to provide a hearing and to facilitate the development of testimony. He did so by asking broad, open-ended questions. In fact, at several times during the hearing, the judge properly noted that he was trying to get Lopez to testify about the relevant events without asking leading questions.[7]

[7] The IJ made several statements to the effect that he was "not trying to suggest an answer to you."

There is no claim that the IJ excluded any evidence proffered by Lopez or prevented him from testifying as to any event Lopez deemed relevant. To the contrary, the IJ gave him every opportunity to plead his case and allowed him additional time at the end of the hearing to address anything not previously covered.

This situation is markedly different from the one in Rivas-Martinez, upon which Lopez relies, where **both** the IJ and the BIA were found to have improperly interpreted the legal standards necessary to show eligibility for asylum. This court did not hold that the error required a new evidentiary hearing, but suggested that one "may be necessary." 997 F.2d at 1146. Essentially, we held that the IJ and BIA **might** have proceeded differently had the proper eligibility test been applied. By contrast, in the instant case, we have held that the BIA utilized the correct test under Mogharrabi.[8] The BIA also necessarily concluded that the evidence introduced at hearing before the IJ was sufficiently developed that it could render findings and conclusions. Thus, there is no danger in this case that the BIA, as ultimate fact-finder, would have handled Lopez' proceedings differently.

[8] We do not comment upon the approach used by the IJ except to note that we are not necessarily persuaded that it applied the wrong standard in the first place.

3. The IJ and BIA's alleged misconstruction of the evidence

Finally, Lopez contends that the IJ and the BIA "overlooked and/or misstated much of [his] testimony, which, if analyzed pursuant to the four criteria of Mogharrabi, would have been sufficient to demonstrate a well-founded fear of persecution . . . ." Lopez' argument is essentially a disagreement with the BIA over its credibility determinations and factual findings. In view of the record in its entirety, we are not prepared to say that the BIA's ultimate finding is not supported by substantial evidence. Adebisi, 952 F.2d at 912; Castillo-Rodriguez, 929 F.2d at 182-83. As noted above, we apply the substantial evidence test to the BIA's findings of fact, and we are not convinced that the BIA's resolution of fact issues compels us to reverse its final determination. Although it is certainly plausible to conclude from the evidence that Lopez did demonstrate a well-founded fear of persecution, there is some evidentiary support in the record for the BIA's conclusion that his fears were not reasonable. We are not permitted to disturb the BIA's findings solely because we might have weighed the evidence differently had we been sitting as trier of fact. Elias-Zacarias, 112 S. Ct. at 816-17 (evidence must **compel** a given conclusion to permit reversal of a BIA finding to the contrary).

D. Denial of Lopez' Motion to Reopen

Lopez alternatively argues that, if the evidence was weak on his asylum claim, then such weakness was the result of the IJ's failure to develop the necessary elements of his claim, and he

was therefore entitled to reopen the case to introduce additional evidence to meet his burden of showing a well-founded fear of persecution.

The BIA may deny a motion to reopen when an alien (i) fails to introduce "previously unavailable, material evidence," (ii) fails to make out a prima facie case for asylum, and (iii) fails to show that, independent of the two prior requirements, he is entitled to reopening in the exercise of agency discretion. INS v. Doherty, 112 S. Ct. 719, 725 (1992); see also Abudu, 485 U.S. at 104-05. As noted above, we review the BIA's denial of his motion to reopen for an abuse of discretion. Abudu, 485 U.S. at 106-07.

The BIA denied his motion on the basis that Lopez had not indicated that the evidence was "material" or "unavailable" at the time of his hearing. See 8 C.F.R. § 3.2 ("Motions to reopen in deportation proceedings shall not be granted unless it appears to the Board that evidence sought to be offered is material and was unavailable and could not have been discovered at the former hearing."). The evidence Lopez sought to introduce was background information regarding political and social conditions in Honduras and a personal declaration amplifying certain statements made at his earlier hearing.[9] There does not appear

[9] Lopez also takes issue with the BIA's characterization of his "new" evidence as "background material," which leads Lopez to conclude that it ignored his proffered declaration. However, we do not find this failure to mention the declaration specifically to be fatal. See Yahkpua v. INS, 770 F.2d 1317, 1321 (5th Cir. 1985) (Where BIA decision is not "so deficient as to warrant the conclusion that it did not adequately consider the equities,

to be any dispute regarding the availability of this evidence at the time of the prior proceedings. However, Lopez argues that the alleged failures of the IJ -- e.g., failure to notify him of, or to apply, the correct legal standard and failure to develop the testimonial facts to meet that standard -- effectively precluded him from introducing it. Because we hold that the BIA applied the correct legal standard to Lopez' asylum claim and that the record before the BIA was sufficient to support its ultimate conclusions -- and in light of the fact that Lopez essentially concedes the availability of this information at the time of the deportation hearing -- we conclude that the BIA did not abuse its discretion in denying Lopez' request to reopen the proceedings to introduce evidence as to his asylum claim.

Lopez alternatively claims that the BIA erred in ignoring his request to reopen on the basis that he purportedly now has the funds to pay his way out of the United States and argues that he should be granted voluntary departure in lieu of deportation. The relevant regulations provide that the alien seeking voluntary departure must show that he has the "immediate means" with which to depart. 8 C.F.R. § 244.1; Lopez-Reyes v. INS, 694 F.2d 332, 334 (5th Cir. 1982). The IJ established that Lopez did not have the "immediate means" to depart voluntarily and denied him that

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"this court will not reverse solely because the opinion does not specifically mention every contention.). Moreover, the BIA's conclusion that "the evidence [Lopez] seeks to offer" at a reopened hearing was not "unavailable during the former hearing" would appear to apply to Lopez' declaration, which he himself concedes was "`available' in some purely abstract sense."

relief. The evidence Lopez sought to introduce at a reopened hearing relates to his alleged current ability to pay, and represents a change in circumstances rather than newly discovered evidence relating to his financial situation at the time of the original deportation hearing. The BIA therefore did not abuse its discretion in denying reopening on this basis.

III. Conclusion

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