UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-5394
Summary Calendar

RAYMOND AERTS,

Petitioner,

VERSUS

IMMIGRATION AND NATURALIZATION SERVICE,

Respondent.

Petition for Review of an Order of the Immigration and Naturalization Service
(A29 720 573)

(April 8, 1994)

Before KING, HIGGINBOTHAM and BARKSDALE, Circuit Judges.

PER CURIAM:[1]

Raymond Aerts challenges the dismissal by the Board of Immigration Appeals (BIA) of his appeal from the denial of an application for suspension of deportation. We **DENY** the petition for review.

I.

Aerts, a citizen of Belgium, came to the United States in 1981 on a visitor visa, which expired June 27, 1982. He did not depart the country, and deportation proceedings were commenced against him

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[1] 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 Pursuant to that rule, the court has determined that this opinion should not be published.

in 1990. He was found deportable, and applied for suspension of deportation under § 244(a)(1) of the Immigration and Nationality Act, 8 U.S.C. § 1254(a)(1).[2] After a hearing in May 1991, the application was denied, because Aerts did not show, as required, that his deportation would "result in extreme hardship to [Aerts] or to his spouse, parent, or child".[3] 8 U.S.C. § 1254(a)(1).

At the suspension hearing, Aerts testified that he has no family in Belgium and was unhappy and uncomfortable there. In the United States, however, he testified he has "found quite a few friends", and can "act as a normal ... person, as a normal wheel in the society." He stated that deportation would be a hardship because he "ha[s] adaptation problems" and "it takes [him] a long time before [he] get[s] acquainted or adapted" to new surroundings.

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[2] The section provides, in relevant part, that the Attorney General may, in her discretion, suspend deportation upon application by an alien who

> has been physically present in the United States for a continuous period of not less than seven years immediately preceding the date of such application, and proves that during all of such period he was and is a person of good moral character; and 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[.]

8 U.S.C. § 1254(a)(1).

[3] The INS stipulated that Aerts had met the other two requirements of the section: good moral character and present in the United States continuously for seven years. 8 U.S.C. § 1254(a)(1).

Aerts called two witnesses in his behalf. The first, the president of a literacy organization for which Aerts worked as a volunteer, stated that she did not know Aerts well enough to testify about any hardship he would suffer if deported. The second, a friend and co-worker of Aerts, testified that Aerts would suffer hardship if deported because he considers the United States his home, whereas Belgium is "an environment that... I don't think is readily going to embrace him at all". The IJ also admitted into the record several letters in support of the suspension application.

After considering the evidence in the record, the IJ entered a decision denying the application.[4] In the decision, the IJ reviewed, *inter alia*, Aerts's employment and volunteer history, lack of property interests in the United States, and his testimony. The IJ concluded that, based on the applicable legal standard, set out in ***Hernandez-Cordero v. INS***, 819 F.2d 558, 560, 562-63 (5th Cir. 1987) (*en banc*), Aerts had not shown that deportation would result in "extreme hardship" to him or a protected family member.[5] Aerts appealed the decision to the BIA, which adopted the IJ's decision and denied the appeal.

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[4] Aerts now contends, for the first time in a footnote to his brief in this appeal, that he is affected by "Seasonal Affective Disorder", for which the recommended treatment is apparently, *inter alia*, daily exposure to natural sunlight, unavailable in Belgium. Because this issue was not before the IJ or BIA, and because Aerts does not address it as an issue on appeal in any case, we do not consider it. (Aerts advises that he will move to reopen.)

[5] The IJ granted Aerts leave to depart voluntarily from the United States.

II.

It is undisputed that Aerts has no spouse, parent, or child who is a citizen of the United States or permanent resident alien. On appeal, he contends only that the IJ did not adequately consider the hardship *to him* that would result from his deportation; specifically, from the "sundering of the family-like relationships he has developed in the United States".

In general, we must affirm a decision by the BIA if it "has made no error in law and if reasonable, substantial, and probative evidence on the record considered as a whole supports its factual findings." ***Howard v. INS***, 930 F.2d 432, 434 (5th Cir. 1991) (citations omitted); 8 U.S.C. § 1105(a)(4). In appeals from BIA decisions based on a finding of "no extreme hardship", we review the substantive and procedural aspects of the decision. ***Hernandez-Cordero v. INS***, 819 F.2d 558, 560, 562-63 (5th Cir. 1987) (*en banc*). Substantively, we review for abuse of discretion, *id.* at 560; ***Ramos v. INS***, 695 F.2d 181 (5th Cir. 1983), which we may find

> 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.

Hernandez-Cordero, 819 F.2d at 563. Our review of the procedural regularity of the BIA's decision "`is limited to ascertaining whether *any* consideration has been given' by the BIA to the factors

establishing `extreme hardship'".[6] ***Id.*** (quoting ***Sanchez v. INS***, 755 F.2d 1158, 1160 (5th Cir. 1985) (emphasis in ***Sanchez***).

In considering the possible hardship that deportation would cause Aerts, the IJ expressly reviewed the length of Aerts's residence in, and community ties to, the United States; his health, age, finances, employment history and potential; and his testimony. *See* ***Sanchez***, 755 F.2d at 1160 n.2 (listing factors pertinent to extreme hardship determination). The BIA reviewed the record, the IJ's decision, and Aerts's contentions on appeal; found "that the [IJ] adequately and correctly addressed the issues raised on appeal"; and affirmed the IJ's decision "based upon and for the reasons set forth in that decision."

The INS asserts that our decision is controlled by this court's *en banc* decision in ***Hernandez-Cordero***, 819 F.2d 558.[7] We agree; essentially, Aerts has not shown that his circumstances "closely approach[] the outer limits of the most severe hardship [he] could suffer". ***Hernandez-Cordero***, 819 F.2d at 563. Nor did

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[6] In affirming a finding of no extreme hardship based on the IJ's opinion, the BIA need not expressly address each factor relied upon by the IJ. *See* ***Sanchez***, 755 F.2d at 1160-61.

[7] Aerts attempts to distinguish ***Hernandez-Cordero*** because the Hernandezes "had significant family ties in Mexico, and they were young and adaptable." Aerts, by contrast, is 51 years old, testified that he is not "adaptable", and has no family ties in Belgium. Still, ***Hernandez-Cordero*** controls.

Based on our reading of ***Hernandez-Cordero***, the crucial factors the BIA considered were the Hernandezes' claims of "financial hardship, the difficulties of adjusting to life in Mexico, and the educational burden on the children". ***Hernandez-Cordero***, 819 F.2d at 560. Of these, the first two factors are also relevant to Aerts's case; the third is not present, because Aerts has no children. We find no difficulty in applying ***Hernandez-Cordero***.

the BIA, or IJ, "utterly fail" to consider any factors relevant to Aerts's extreme hardship claim. ***Id.*** Thus, we cannot find that the BIA abused its discretion. ***Hernandez-Cordero*** puts it plainly:

> The question in this case is not whether [Aerts is an] honest, dependable, hardworking member[] of society. [He] clearly [is]. Any of us would be happy to see [hi]m gain citizenship. But Congress in its wisdom has determined that this is not enough to avoid deportation under 8 U.S.C. § 1254(a)(1). To be eligible for this discretionary relief, aliens with the highest character and strictest work ethic must also establish that they will "in the opinion of the Attorney General" suffer "extreme hardship" if deported. Thus the only issue ... is whether the record demonstrates that the BIA, as the Attorney General's delegate, abused its discretion in finding that [Aerts] will not suffer "extreme hardship" if deported .... The record in this case simply does not reveal such an abuse of discretion.... In short, we see no unique hardship or unusually severe hardship ... that approaches the level of hardship required to compel a finding of "extreme hardship" by the BIA.

Id. at 563-64.

III.

Accordingly, the petition for review from the BIA's order denying the application for suspension of deportation is **DENIED.**