UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-5416
Summary Calendar

GILBERTO FERNANDEZ,

Petitioner,

versus

IMMIGRATION AND NATURALIZATION SERVICE,

Respondent.

Petition for Review of an Order of the Immigration and Naturalization Service
(A13 639 540)

(April 19, 1994)

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

PER CURIAM:*

Petitioner Gilberto Fernandez challenges the Board of Immigration Appeals' (BIA) denial of his application for a

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

suspension of deportation under § 244(a)(1) of the Immigration and Nationality Act (INA).[1] Although Fernandez was statutorily eligible for suspension of deportation, the BIA refused to grant him relief in light of his criminal and immigration history. Because the BIA articulated a valid basis for the denial and has "unfettered" discretion to suspend, or refuse to suspend, deportation, we deny the petition for review.

I

FACTS AND PROCEEDINGS

Fernandez, a Mexican citizen, first entered the United States pursuant to a fraudulently acquired immigrant visa; however, he was deported after he was convicted for transporting illegal aliens. Fernandez subsequently re-entered the United States in 1970, using an invalid alien registration card. Since his re-entry, Fernandez has lived in Texas with his wife and five children.[2] In addition to his conviction for transporting illegal aliens, Fernandez has a conviction for involuntary manslaughter stemming from a car accident, and three convictions for driving while intoxicated. Although Fernandez received a suspended sentence for the involuntary manslaughter conviction, he served two years in prison for a parole violation.[3]

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[1]Codified at 8 U.S.C. § 1254(a)(1).

[2]Fernandez's wife is a permanent resident, four of his children are United States citizens, and one of his children is a permanent resident. In addition, Fernandez has a grandchild who is a United States citizen. Fernandez's parents and siblings are all permanent residents, residing in Texas.

[3]Fernandez violated his parole by driving while intoxicated.

Fernandez applied for suspension of deportation pursuant to § 244(a)(1) after the Immigration and Naturalization Service (INS) initiated deportation proceedings against him. Following a hearing, an immigration judge (IJ) found that Fernandez satisfied the three statutory requirements for suspension of deportation. The IJ further concluded that Fernandez's application should be granted because he had strong family ties in the United States and had resided in the United States for a long time. The INS appealed the IJ's decision to the BIA, arguing that the IJ erroneously found that deportation would result in extreme hardship. The BIA concurred with the IJ's finding of extreme hardship; however, the BIA concluded, on the basis of his criminal and immigration history, that Fernandez did not merit suspension of deportation. The BIA sustained the INS' appeal and declined to grant relief.

II

ANALYSIS

Section 244(a)(1) permits the Attorney General to suspend deportation of an alien upon a showing that the alien has been physically present in the United States for not less than seven years immediately preceding the application date, has been a person of good moral character during that period, and would suffer extreme hardship if deported.[4] Even if eligibility is shown, the Attorney General retains the discretion to suspend, or

[4]See 8 U.S.C. § 1244(a)(1); Hernandez-Cordero v. INS, 819 F.2d 558, 560 (5th Cir. 1987) (en banc).

refuse to suspend, deportation.[5] The Attorney General's discretion is "`unfettered'" or "`a matter of grace,' similar to a Presidential pardon." Accordingly, the standard of review is "exceedingly narrow."[6]

In denying Fernandez's application, the BIA articulated a valid basis for its decision; namely, his criminal and immigration history.[7] Fernandez does not challenge the BIA's findings with respect to his criminal and immigration history. Fernandez contends nevertheless that the BIA abused its discretion because it failed to consider his family ties and his long residence in the United States--both factors which the IJ considered determinative. Contrary to Fernandez's contentions, the BIA did consider his family ties and long residence, as these factors were central to its determination that deportation would result in extreme hardship.[8] Furthermore, the BIA was well within its discretion to give greater weight to Fernandez's

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[5]Hernandez-Cordero, 819 F.2d at 560.

[6]Hernandez-Cordero, 819 F.2d at 560-61; accord Fiallo v. Bell, 430 U.S. 787, 792 (1977); United States v. Shaughnessy, 353 U.S. 72, 77 (1957) ("Suspension of deportation is a matter of discretion and of administrative grace, not mere eligibility; discretion must be exercised even though statutory prerequisites have been met.").

[7]See INS v. Rios-Pineda, 471 U.S. 444, 451 (1985).

[8]"[I]f any meaning is to be given the Board's *discretion* to deny suspension despite an applicant's eligibility under the statute, we cannot mandate that suspension be granted simply upon a showing of [extreme] hardship." Vaughn v. INS, 643 F.2d 35, 37 (1st Cir. 1981) (citation omitted).

criminal and immigration history than that afforded by the IJ.[9] Given the BIA's articulation of a valid basis for denying relief, we cannot say that the BIA abused its "unfettered" discretion.

III

CONCLUSION

Because the BIA's denial of relief was premised on valid considerations which find support in the record, the BIA was operating within its "unfettered" discretion. Having found no reversible error in the decision of the BIA, the petition for review is

DENIED.

[9] See Castillo-Rodriguez v. INS, 929 F.2d 181, 184 (5th Cir. 1991); Rivera v. INS, 810 F.2d 540, 541 (5th Cir. 1987).