IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 94-40208

Summary Calendar

THONGSOUK PHOMSAVANH and
SOURYAPHONE PHOMSAVANH,

Petitioners,

versus

IMMIGRATION AND NATURALIZATION
SERVICE,

Respondent.

Petition for Review of an Order
of the Board of Immigration Appeals
(A71 945 761 & A71 945 762)

(September 26, 1994)

Before KING, JOLLY, and DeMOSS, Circuit Judges.

PER CURIAM:[*]

Petitioners seek review of an order of deportation issued by the Board of Immigration Appeals ("BIA"). We affirm the decision of the BIA.

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 Pursuant to that Rule, the court has determined that this opinion should not be published.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

There is no dispute surrounding the underlying facts of this matter. Thongsouk Phomsavanh ("Phomsavanh"), a native and citizen of Laos, and her son, Souryaphone Phomsavanh ("Souryaphone"), a native and citizen of France, seek to avoid deportation.

At her deportation hearing, Phomsavanh related how she and Souryaphone came to this country. In 1976, Phomsavanh left Laos for France where Souryaphone was born and both had the right to remain permanently. Nine years later, Phomsavanh and Souryaphone came to the United States as visitors with temporary visas and have remained in this country ever since.

In April 1991, Phomsavanh filed a request for asylum with the Immigration and Naturalization Service ("INS") claiming that she would face persecution if she returned to Laos. In her application, she also stated that her parents (who are legal United States residents) and her half-brother (who is a United States citizen) were living in California. The INS sent her a notice of intent to deny the application in September 1992, and officially denied her application in February 1993. At that time, the INS also ordered Phomsavanh to show cause why she should not be deported. In response, Phomsavanh filed a second request for asylum as well as an application for suspension of deportation on behalf of herself and Souryaphone.

The deportation hearing was held before an Immigration Judge ("IJ") on July 29, 1993. At that hearing, Phomsavanh conceded

that she had overstayed her visa and, therefore, was subject to deportation. She nevertheless persisted in her requests for asylum, suspension of deportation, and withholding of deportation.

In support of her claims, Phomsavanh testified that she and her family would face extreme hardship if she were deported. In short, she asserted that this hardship consisted of the following: 1) her own desire to stay in the United States where she had given birth to a son and which had become her "second home"; 2) her elderly and infirm parents' need for her to remain in this country to care for them; and 3) Souryaphone's need to remain in the United States because he has no relatives living in France.

In an oral ruling, the IJ rejected all of Phomsavanh's and Souryaphone's claims and denied their request for asylum and their application for suspension of deportation. In his opinion, the IJ, among other findings, made several comments on the issue of extreme hardship. First, he noted that because of his young age, Phomsavanh's American born son could adjust to a new country. Second, the IJ observed that Phomsavanh's parents were receiving government aid, and therefore, did not rely on her financially. Third, the IJ commented that Phomsavanh's American half-brother could assist their parents and had done so in the past. Fourth, the IJ rejected the claim that Souryaphone would face extreme hardship by returning to France alone, stating that

any such hardship was the result of the family's active choice to come to this country.

Phomsavanh and Souryaphone appealed the decision of the IJ to the BIA, which affirmed the decision by order dated December 9, 1993. This petition for review of the BIA's denial to stay deportation followed. Phomsavanh and Souryaphone do not challenge the rejection of their requests for asylum.

II. STANDARD OF REVIEW

To qualify for a suspension of deportation under § 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254, an applicant must prove, among other things, that his deportation would "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." § 1254(a)(1). The BIA's decision regarding "extreme hardship" is reviewed for abuse of discretion. Hernandez-Cordero v. INS, 819 F.2d 558, 563 (5th Cir. 1987) (en banc) ("[C]ourt has an extremely narrow review of the BIA's determination of no `extreme hardship.'"); Sanchez v. INS, 755 F.2d 1158, 1160 (5th Cir. 1985) ("The standard of review [for extreme hardship findings] . . . is of a most limited kind."); Zamora-Garcia v. INS, 737 F.2d 488, 490 (5th Cir. 1984). Thus, we will upset a BIA finding on extreme hardship "only in a case where the hardship is uniquely extreme, at or 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.

In addition to the court's limited substantive review of the BIA's extreme hardship findings, "we may . . . scrutinize the . . . decision for procedural regularity." Id. This examination, however, also is limited, and we look only at "whether any consideration has been given by the BIA to the factors establishing `extreme hardship.'" Id. at 563 (quoting Sanchez, 755 F.2d at 1160). Further, in its consideration of those factors, the BIA is not required "`to write an exegesis on every contention. What is required is merely that it 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.'"[1] Id. (quoting Osuchukwu v. INS, 744 F.2d 1136, 1142-43 (5th Cir. 1984)); see also Ganjour v. INS, 796 F.2d 832, 839 (5th Cir. 1986) ("[T]he BIA must show that is has meaningfully addressed and reached a reasoned conclusion

[1] Phomsavanh and Souryaphone make much of an apparent tension in our cases regarding the proper scope of review of BIA's attention to procedural niceties. They contrast Sanchez, 755 F.2d at 1160, which stated that review is limited to determining whether the BIA gave "any consideration," to the appropriate factors, with Ramos v. INS, 695 F.2d 181, 188 (5th Cir. 1983), in which we stated that the BIA must "meaningfully address[] and reach[] a reasoned conclusion" concerning the alien's specific claims of hardship that are supported by the evidence. Whatever tension may have existed in these cases, it has been abrogated by our en banc decision in Hernandez-Cordero. 819 F.2d at 563. In that case we restated the standard of review articulated in Sanchez and declined to upset a finding of the BIA noting that the board did not "`utterly fail' to consider the relevant hardship factors." Id. (citing Sanchez, 755 F.2d at 1160).

based on the evidence supporting the alien's specific assertions."). Additionally, while this court will review whether the BIA refused to give any consideration to the extreme hardship factors, we do not examine the weight the BIA should have afforded each factor. See Sanchez, 755 F.2d at 1160 (noting that an appellate court "may not undermine the Board's discretion by parsing the factors into ever smaller subfactors and requiring the Board to consider the pieces"); see also INS v. Jong Ha Wang, 450 U.S. 139, 143-46 (1981) (holding that appellate court erred in substituting its extreme hardship determination for that of the BIA); Zamora-Garcia, 737 F.2d at 493 ("Although we may find an abuse of discretion in the Board's utter failure to consider relevant hardship factors, we lack the authority to determine the weight, if any, to be afforded each factor."). Finally, the BIA need only address those factors fully before it. As the First Circuit noted, "[a] party who suggests a point to the [BIA] fleetingly and without any developed argumentation is not entitled to complain if the [BIA] disregards the passing reference." Martinez v. INS, 970 F.2d 973, 975 (1st Cir. 1992).

III. ANALYSIS

Phomsavanh and Souryaphone contend that the BIA failed to give meaningful consideration to their claims of extreme hardship. In particular, they contend that the BIA failed to consider: 1) the extreme hardship Phomsavanh's deportation would cause to her American born son and her legal permanent resident

parents; 2) Phomsavanh's and Souryaphone's acculturation to American life over the last nine years; 3) their family and community ties; 4) Phomsavanh's property holdings in this country; or 5) the cumulative effect of all these factors. Yet, Phomsavanh's and Souryaphone's brief to the BIA did not include or elaborate on these factors. Instead, it focused primarily on their request for asylum. The short section of the brief devoted to the extreme hardship inquiry discussed only two items--Phomsavanh's ownership of a house in this country and the hardship her deportation would cause her elderly parents, particularly her sick father.

In light of the deferential review that this court must give to the BIA's substantive findings, we reject Phomsavanh's challenge to the BIA's extreme hardship determination. There is no question that after living in this country for nearly ten years, some hardship will result from Phomsavanh's deportation. Nevertheless, as the Supreme Court has noted, immigration quotas cannot be avoided by "any foreign visitor who has fertility, money, and the ability to stay out of trouble with the police for seven years." Wang, 450 U.S. at 145 (internal quotations and citation omitted). In this case, the BIA determined that there was no extreme hardship. It is the BIA's prerogative to determine what constitutes "extreme hardship," see id. ("The Attorney General and his delegates have the authority to construe `extreme hardship' narrowly should they deem wise to do so."), and we may not upset their findings lightly. In this instance,

Phomsavanh's claims simply are not "so severe that any reasonable person would necessarily conclude that the[y] . . . [are] extreme." Hernandez-Cordero, 819 F.2d at 563. Thus, we must reject Phomsavanh's challenge to the BIA's extreme hardship determination. See Wang, 450 U.S. at 144-45 (holding reviewing court should not have overturned BIA finding because it preferred another interpretation of extreme hardship); Hernandez-Cordero, 819 F.2d at 563 (remarking that a "court has virtually no substantive review of the BIA's `extreme hardship' finding"); Sanchez, 755 F.2d at 1160 (noting that appellate court may reverse BIA decision only if it is "arbitrary, irrational or contrary to law" (internal quotations and citation omitted)).

As noted above, we also may examine the procedure used by the BIA in its extreme hardship determinations. In its order, the BIA specifically noted that the IJ "gave great consideration to the factor of `extreme hardship' as it related to the adult respondent's elderly parents and the separation of family generally." The BIA also addressed the hardship to Phomsavanh that would be caused by the loss of her property in this country, concluding that economic detriment in the absence of other "substantial equities" did not constitute extreme hardship. See Zamora-Garcia, 737 F.2d at 491 ("It is well established that the adverse economic impact of deportation alone is insufficient to justify a finding of extreme hardship."). It is true that Phomsavanh's claims regarding community ties and acculturation were not specifically addressed by the BIA, but those claims were

not raised in her brief and were not developed in the proceeding before the IJ. Thus, the BIA was not required to give them independent, detailed review. See Martinez, 970 F.2d at 975 (holding that the BIA need not address claims brought only in passing). In sum, the record provides the required "sufficient indication that [the BIA] ha[d] a fair understanding of the . . . relevant contentions of hardship." Ganjour, 796 F.2d at 839. Therefore, because the BIA addressed substantially all of Phomsavanh's contentions regarding the hardship that would befall her if she were deported, we reject her claim that the BIA did not adequately consider the facts and circumstances of her case.[2]

IV. CONCLUSION

For the foregoing reasons, the decision of the BIA is AFFIRMED.

[2] In their prayer for relief, Phomsavanh and Souryaphone request, for the first time, voluntary departure in six months in order to sell property. We, however, may not consider this request initially raised in this manner. See 8 U.S.C. § 1105a.