IN THE UNITED STATES COURT OF APPEALS

for the Fifth Circuit

No. 94-40297
(Summary Calendar)

FELIX EMEKA ECHE

Petitioner,

versus

IMMIGRATION AND NATURALIZATION SERVICE,

Respondent.

Petition for Review of an Order of the
Board of Immigration Appeals
(A29 575 670)

(December 19, 1994)

Before DUHÉ, WIENER and STEWART, Circuit Judges.

PER CURIAM:[*]

Felix Emeka Eche appeals the Board of Immigration Appeals (BIA) decision which affirmed the immigration judge's determination that he is ineligible for a "hardship waiver" and the resultant order of deportation. Finding no error in the BIA decision, we affirm.

Facts

Felix Emeka Eche ("Eche"), a Nigerian, came to the United States on January 17, 1989, married U.S. Citizen, Stacey Cyphers ("Cyphers") on April 6, 1989 and applied to the Immigration and

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Naturalization Service ("INS") for an adjustment of status on May 18, 1989 based on the marriage. On May 4, 1990, the INS approved the petition and Eche became a conditional permanent resident based on his marriage to a United States citizen. On February 25, 1992, a joint petition was filed to remove the condition. On August 24, 1992, Eche and Cyphers appeared for an interview with the INS, but Eche left before he was interviewed. Cyphers gave a statement which indicated that Eche offered to pay her to appear for the interview, and that she desired to withdraw the joint petition. On September 25, 1992, the INS terminated Eche's conditional permanent resident status[1] and issued an Order to Show Cause why he should not be deported due to the termination. The Eches divorced on November 6, 1992, and Eche applied for a "good faith" waiver under Section 216 (c)(4)(B) of the Immigration and Naturalization Act, 8

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[1] 8 C.F.R. § 216.4 requires termination of this status as follows:

> **§ 216.4 Petition to remove conditional basis of lawful permanent resident status.**
>
> (b) *Interview--*
>
> *(3) Termination of status for failure to appear for interview.* If the conditional resident alien and/or the petitioning spouse fail to appear for an interview in connection with the joint petition required by section 216(c) of the Act, the alien's permanent residence status will be automatically terminated as of the second anniversary of the date on which the alien obtained permanent residence. The alien shall be provided with written notification of the termination and the reasons therefor, and an order to show cause shall be issued placing the alien under deportation proceedings. The alien may seek review of the decision to terminate his or her status in such proceedings, but the burden shall be on the alien to establish compliance with the interview requirements.

U.S.C. § 1186a(c)(4)(B).[2] On February 12, 1993, the INS denied his waiver application and notified him through counsel of the termination of his status as a conditional permanent resident.

At the deportation hearing, Eche again sought the "good faith" waiver. After evidentiary hearings in May and June, 1993, the immigration judge (IJ) determined that Eche was not eligible for the waiver under § 216 (c)(4)(B) because he was at fault in failing to comply with § 216(c)(1) of the Act, 8 U.S.C. § 1186a(c)(1). The Board of Immigration Appeals affirmed the decision of the IJ. Eche petitioned the BIA for reconsideration of its decision. The BIA denied this petition and Eche appeals.

Discussion

Eche's notice of appeal to the BIA states the following three bases for his administrative appeal: (1) a bona fide marriage existed between the parties, and the government failed to prove otherwise, (2) the government was never able to prove fraud in the marriage, and (3) the marriage was entered in good faith and the respondent is entitled to a waiver. Accordingly, the BIA properly

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[2] 8 U.S.C. § 1186a(c)(4)(B) provides, in pertinent part, as follows:

(4) Hardship waiver

The Attorney General, in the Attorney General's discretion, may remove the conditional basis of the permanent resident status for an alien who fails to meet the requirements of paragraph (1) if the alien demonstrates that--

(B) the qualifying marriage was entered into in good faith by the alien spouse, but the qualifying marriage has been terminated (other than through the death of the spouse) and the alien was not at fault in failing to meet the requirements of paragraph (1) . . . .

determined that Eche's sole argument in the administrative appeal was that the IJ erred in denying his application for a hardship waiver pursuant to § 216 (c)(4)(B) of the Act, 8 U.S.C. § 1186a(c)(4)(B). The BIA decision notes that the record wholly supports the IJ's finding that Eche was "at fault" in failing to comply with paragraph 1 of § 1186a(c).[3] Although Eche and the INS disagree as to why he walked out of the interview before he was interviewed, it is undisputed that he did walk out. The IJ found that he left because he was angry.

In immigration cases, we are authorized to review only the decision of the BIA, not that of the IJ. Ogbemudia v. I.N.S., 988 F.2d 595, 598 (5th Cir. 1993) (footnote omitted). The BIA conducts a de novo review of the administrative record, and we consider the errors of the IJ only to the extent they affect the BIA decision. Id.

Eche's contentions may be summarized as follows: (1) the BIA did not conduct a de novo review of the administrative record; it

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[3] 8 U.S.C. § 1186a(c)(1) provides the following (emphasis ours):

(c) Requirements of timely petition and interview for removal of condition

(1) In general

In order for the conditional basis established under subsection (a) of this section for an alien spouse or an alien son or daughter to be removed--

(B) in accordance with subsection (d)(3) of this section, the alien spouse and the petitioning spouse (if not deceased) must appear for personal interview before an officer or employee of the Service respecting the facts and information described in subsection (d)(1) of this section.

merely rubber-stamped the decision of the IJ; (2) the INS failed to prove all the allegations contained in the Order to Show Cause; (3) the IJ deprived him of due process of law by denying his motion for continuance due to newly hired counsel and by denying his objection to evidence presented by the INS; and (4) the BIA erred in refusing to entertain his motion to reopen/reconsider.

Contrary to Eche's contention, the BIA's opinion reflects that it reviewed the record and did not "merely rubber stamp" the IJ's decision. We agree with the BIA: the record does support the findings of the IJ. Therefore, Eche's first contention is without merit. As to his second contention, the only allegations in the Order to Show Cause were the dates of Eche's entry and his adjustment to conditional permanent resident status, and that his conditional permanent resident status had been terminated. Under 8 U.S.C. § 1251(a)(1)(D), this termination, alone, is sufficient to render him deportable. The record shows that Eche's status as a conditional permanent resident was terminated. Eche has not contested, before either the BIA or this court, that it was not. Accordingly, his second contention has no merit. Thirdly, Eche's complaints regarding the continuance and the objection to evidence were not raised before the BIA, therefore we do not consider them herein. Finally, having found no error in the BIA determination, we find no error in the BIA's denial of Eche's motion to reconsider/reopen. For these reasons, the decision of the BIA is AFFIRMED.