IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

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No. 94-40485
Summary Calendar

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GEORGE KUPARADZE

Petitioner,

v.

IMMIGRATION AND NATURALIZATION SERVICE,

Respondent.

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Petition for Review of an Order
of the Board of Immigration Appeals
(A22-541-996)

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(December 29, 1994)

Before KING, JOLLY, and DeMOSS, Circuit Judges.

PER CURIAM:*

Petitioner George Kuparadze seeks review of the Board of Immigration Appeals' decision to affirm the denial of deportation relief under sections 212(c) and 212(h) of the Immigration and Nationality Act. We affirm the decision of the Board.

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 Pursuant to that Rule, the court has determined that this opinion should not be published.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

Kuparadze is a 55 year-old native of Georgia, a part of the former Soviet Union, and is a citizen of Canada. He entered the United States as an immigrant on October 26, 1979. Kuparadze is married with no children, and he currently resides in New York City.

On September 22, 1983, Kuparadze was convicted in New York on two counts of possession of a weapon. On February 22, 1991, he was also convicted in Florida on two counts of making false statements during a firearms transaction. For this latest conviction, Kuparadze was sentenced to probation, but he violated his probation conditions by travelling outside of the United States without permission.

At his August 4, 1993 deportation hearing, Kuparadze conceded his deportability, but he applied for a waiver of deportation under sections 212(c)[1] and 212(h)[2] of the Immigration and Nationality Act

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[1] Section 212(c) provides in relevant part:

> Aliens lawfully admitted for permanent residen[ce] who temporarily proceeded abroad voluntarily and not under an order of deportation, and who are returning to a lawful unrelinquished domicile of seven consecutive years, may be admitted in the discretion of the Attorney General.

8 U.S.C. § 1182(c).

[2] Section 212(h) provides that the Attorney General may, in her discretion, waive the exclusion of an alien who is:

> the spouse . . . of a citizen of the United States . . . if it is established to the satisfaction of the Attorney General that the alien's exclusion would result in ***extreme hardship*** to the United States citizen

("INA"). The Immigration Judge ("IJ") denied relief under both statutory provisions, concluding not only that "[t]he positive equities displayed by [Kuparadze] are not sufficient to outweigh the negative factors of his recidivistic criminal history, his violations of probation, and his lack of rehabilitation," but also that Kuparadze "failed to demonstrate extreme hardship to his spouse." The Board of Immigration Appeals ("BIA") agreed with the IJ's decision, noting that "the immigration judge correctly determined that [Kuparadze's] spouse would not suffer extreme hardship if he were deported and that [Kuparadze] was undeserving of a favorable exercise of discretion." Kuparadze appeals from this decision of the BIA.

## II. STANDARD OF REVIEW

In immigration cases, we review "only the decision of the BIA, not that of the IJ." Ogbemudia v. INS, 988 F.2d 595, 598 (5th Cir. 1993). We consider the errors of the IJ only to the extent that they affect the decision of the BIA, which itself conducts a de novo review of the administrative record. See id.

The BIA's denial of a section 212(c) petition for relief is reviewed under an abuse of discretion standard. See Diaz-Resendez v. INS, 960 F.2d 493, 495 (5th Cir. 1992). Such denial will be upheld "unless it is arbitrary, irrational, or contrary to law." Id.; accord Molenda v. INS, 998 F.2d 291, 293-94 (5th Cir. 1993).

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. . . .

8 U.S.C. § 1182(h)(1)(B) (emphasis added).

As we have noted, "our scope of review is `exceedingly narrow.'" Ashby v. INS, 961 F.2d 555, 557 (5th Cir. 1992). In addition, a petitioner seeking relief under section 212(c) bears the burden of demonstrating that his application merits favorable consideration. See Diaz-Resendez, 960 F.2d at 495.

The BIA's denial of a section 212(h) petition for relief is also reviewed under an abuse of discretion standard. See Osuchukwu v. INS, 744 F.2d 1136, 1140 (5th Cir. 1984). We may find an abuse of discretion under section 212(h) "if the Board utterly failed or refused to consider relevant hardship factors . . . ." Id. at 1141. Under this section, "[t]he burden of making a prima facie case of hardship is on the alien." Id. at 1143.

## III. ANALYSIS AND DISCUSSION

### A. Section 212(c) Relief

Section 212(c) of the INA provides discretionary relief from deportation for permanent resident aliens who have been lawfully domiciled in the United States for more than seven years. See Molenda, 998 F.2d at 295; Ashby, 961 F.2d at 557. Even though § 212(c) literally applies only to admissions, the provision has been consistently interpreted to permit permanent aliens in deportation proceedings to apply for a waiver. See Diaz-Resendez, 960 F.2d at 494 n.1. Proper exercise of discretion under this section requires a balancing of "`the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented [o]n his behalf.'" Molenda, 998 F.2d at 295 (quoting Matter of Marin, 16 I&N Dec. 581, 584 (BIA 1978)).

In essence, Kuparadze claims that the IJ failed to properly consider the positive and negative factors in his case. He asserts that the IJ and the BIA overlooked evidence regarding the length of his marriage and his residency in the United States, the status of his and his wife's business enterprises, and the health problems of his wife. He also contends that the IJ improperly assumed that Mrs. Kuparadze's employment status was easily transferrable to Canada, noting that there is "nothing in the record to support such a contention."

Upon our review, however, we find that the BIA's decision demonstrates that it fairly considered all of the relevant factors. It looked at Kuparadze's marriage and considered its duration of over twenty years. It noted Kuparadze's fourteen year residence in the United States and his entry at age forty. It considered his business, noting that it had just recently started and that it had no employees at the time of the hearing. It considered his wife's employment, observing that she is the vice-president of a trading company in New York City. The BIA also specifically noted the heart problems of Mrs. Kuparadze, and it observed that there was no evidence suggesting that Mrs. Kuparadze would be unable to receive adequate medical care in Canada. The BIA also considered a host of other factors before concluding that Kuparadze's situation did not merit a waiver of deportation. Finally, the BIA's statement that "the respondent has failed to establish that [Mrs. Kuparadze] would be unable to find such employment" in Canada was not an abuse of discretion, as Kuparadze has the burden of demonstrating his

equities and hardships. Simply put, the BIA did meaningfully consider all of the relevant factors, and "we lack the authority to determine the weight, if any, to be afforded each factor." Osuchukwu, 744 F.2d at 1141. Consequently, we conclude that the BIA did not abuse its discretion in affirming the denial of a § 212(c) waiver of deportation.

**B. Section 212(h) Relief**

Although the language of § 212(h) speaks to the admission of an alien, "the Board has determined that is also available to an alien present in the United States who applies for adjustment of status under § 245 of the Act." Osuchukwu, 744 F.2d at 1139. In the present case, Kuparadze applied for such an adjustment. In a § 212(h) analysis, the BIA has previously observed that:

> [t]he key term in the provision is `extreme' and thus only in cases of great actual or prospective injury to the United States nation will the bar [to admission] be removed. Common results of the bar, such as separation, financial difficulties, etc. in themselves are insufficient to warrant approval of an application unless combined with much more extreme impacts. The burden of proof in such a proceeding lies with the applicant . . . .

Matter of Ngai, 19 I&N Dec. 245, 246-47 (BIA 1984) (citations omitted). Simply put, "the common results of deportation or exclusion are insufficient to prove extreme hardship." Hassan v. INS, 927 F.2d 465, 468 (9th Cir. 1991).

Kuparadze again contends that he clearly demonstrated that his wife would suffer "extreme hardship" if he was deported to Canada. He argues that at her age, it will be difficult for her to find a similarly-situated job in Canada. Moreover, he reasserts that his

wife has family in New York City and that his wife suffers from heart problems.

The BIA, however, properly exercised its discretion in concluding that Kuparadze had not demonstrated "extreme hardship" to his wife. The BIA considered Mrs. Kuparadze's situation if she were to remain in New York City and if she were to accompany her husband to Canada. If she were to remain in New York, the BIA noted that she would suffer emotional hardship because of the separation from her husband, but the Board also observed that the hardship is mitigated by the presence of her family in New York and by the possibility of visiting her husband in Canada (due to Canada's proximity to New York). Similarly, even though residence in Canada would cause Mrs. Kuparadze to suffer the emotional hardship of separation from her family, the BIA noted that the hardship would be mitigated by the expected emotional support from her husband.

As to her employment, the BIA did not abuse its discretion in concluding that Kuparadze "failed to establish any significant level of economic hardship to his spouse if he were deported and she remained in the United States at her present place of employment." Similarly, because Kuparadze has the burden of proving extreme hardship to his wife, there was no abuse of discretion in the BIA's observation that Kuparadze failed to demonstrate that his wife would have difficulty finding commensurate employment in Canada. Kuparadze only made unsupported assertions to the contrary.

Finally, the BIA did not abuse its discretion in concluding that Kuparadze failed to demonstrate any hardship to his spouse if she remained in New York and received her current level of medical treatment, and by similarly observing that Kuparadze "failed to establish that his spouse would be unable to obtain adequate medical treatment in Canada for her health conditions." Once again, there is no evidence in the record to the contrary, and Kuparadze cannot meet his burden solely with unsupported contentions. In short, the record does not evince a clear showing of "extreme hardship," especially in light of the principle that "the common results of deportation or exclusion are insufficient to prove extreme hardship." Hassan, 927 F.2d at 468. We cannot conclude that the Board utterly failed or refused to consider relevant hardship factors, and as such, we find that the BIA did not abuse its discretion in denying Kuparadze a § 212(h) waiver of deportation.

## IV. CONCLUSION

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