

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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NO. 94-40575  
Summary Calendar

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SAMUEL O. AHAGHOTU, Petitioner,  
versus  
IMMIGRATION AND NATURALIZATION SERVICE, Respondent.

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Petition for Review of an Order of the  
Board of Immigration Appeals  
(A18-887-995)

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(September 28, 1994)

Before SMITH, EMILIO M. GARZA, and PARKER, Circuit Judges.

PER CURIAM<sup>1</sup>:

*Pro se* Petitioner Samuel O. Ahaghotu ("Ahaghotu") appeals the denial of his application for relief from deportation under Section 212(c) of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1182(c). The Board of Immigration Appeals ("Board") affirmed the order of the Immigration Judge ("IJ") finding Ahaghotu deportable and denying his application for relief. We affirm.

FACTS AND PROCEDURAL HISTORY

Ahaghotu is a 39 year-old native and citizen of Nigeria. He

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<sup>1</sup> 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

emigrated to the United States in 1969. Since that time, he has continued to contribute to what has become a long criminal record. In 1976, Ahaghotu was convicted in Fairfax, Virginia for petit larceny. In Rockville, Maryland he was convicted in 1978 for fraudulent check writing, in 1979 for forgery, in 1988 for bad checks, in 1990 for theft under \$300 and in 1991 for larceny and theft under \$300. In 1983, Ahaghotu was convicted in Queens, New York for possession of marijuana. In 1989, he was convicted in Prince George's County, Maryland for theft. In Washington, D.C., Ahaghotu was convicted in 1990 for attempted possession of marijuana, and in 1992 for possession of marijuana, possession of cocaine and possession of drug paraphernalia with intent to use.

On August 6, 1992, the INS charged Ahaghotu with being deportable under Section 241(a)(2)(B)(i) of the INA, as an alien who had been convicted of violating a law relating to a controlled substance. A hearing was held on April 8, 1993 before an IJ, who found Ahaghotu deportable. He was given until April 16, 1993 to file an application for a § 212(c) waiver of deportation. When Ahaghotu failed to file by that date, the IJ found that he had abandoned all claims for deportation relief and ordered him deported to Nigeria. Ahaghotu appealed the IJ's order to the Board.

On June 28, 1993, the Board remanded Ahaghotu's case, finding that he had provided a reasonable explanation for his failing to meet the application deadline. On remand, the IJ held a second hearing on October 1, 1993. After hearing his testimony and

reviewing the documentary evidence, the IJ denied Ahaghotu's application for § 212(c) relief. On appeal, the Board affirmed the decision of the IJ.

#### STANDARD OF REVIEW

We will affirm the Board's decision if there exists no error in law, and if "reasonable, substantial, and probative evidence on the record considered as a whole supports its factual findings." *Molenda v. I.N.S.*, 998 F.2d 291, 293 (5th Cir. 1993) (quoting *Howard v. I.N.S.*, 930 F.2d 432, 434 (5th Cir. 1991)). Our review of the Board's denial of a § 212(c) waiver is further limited to a determination of whether the denial was "arbitrary, irrational, or contrary to law." *Id.* (quoting *Diaz-Resendez v. I.N.S.*, 960 F.2d 493, 495 (5th Cir. 1992)). Section 212(c) provides no standards governing the exercise of the Board's discretion. Therefore, "the Attorney General has unusually broad discretion in granting and denying waivers." *Ashby v. I.N.S.*, 961 F.2d 555, 557 (5th Cir. 1992).

#### DISCUSSION

"Section 212(c) provides for discretionary relief from deportation for a permanent resident alien who has been lawfully domiciled in the United States for more than seven years." *Molenda*, 998 F.2d at 295; see also 8 U.S.C. § 1182(c). In addressing a § 212(c) waiver, the IJ "must balance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented in his behalf." *Molenda*, 998 F.2d at 295 (quoting *Matter of Marin*, 16 I & N Dec. 581, 584 (BIA

1978)). The petitioner must also "demonstrate that his equities were of an unusual or outstanding nature to countervail the seriousness of his criminal offense," although such a showing does not guarantee a favorable exercise of discretion. *Id.* (citing *Matter of Buscemi*, 19 I & N Dec. 628 (BIA 1988)).

Ahaghotu contends that the IJ and the Board failed to consider several favorable factors including: 1) that he lived in the United States for 24 years; 2) that he had a large number of family members in the United States; 3) that the deportation would cause him unusual hardship; and 4) that he was remorseful and rehabilitated. Based on our review of the record, however, we find that the IJ and the Board did consider all of the favorable factors argued by Ahaghotu, but found that they did not outweigh the serious adverse factors present in this case, particularly his lengthy criminal record and lack of rehabilitation. We cannot reweigh the factors presented to the IJ and the Board, for that would approximate a *de novo* review. *I.N.S. v. Rios-Pineda*, 471 U.S. 444, 452, 105 S.Ct. 2098, 2103, 85 L.Ed.2d 452 (1985). Because we are limited to an abuse of discretion standard, we find that the Board did not abuse its discretion in denying Ahaghotu's application for a § 212(c) waiver of deportation.

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