IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

NO. 94-40608
Summary Calendar

JOHN ONORME AGBI, Petitioner,

versus

IMMIGRATION AND NATURALIZATION SERVICE, Respondent.

Petition for Judicial Review of a Decision by the
Board of Immigration Appeals
(A22-363-450)

(February 16, 1995)

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

PER CURIAM[*]:

Pro se Petitioner John Onorme Agbi ("Agbi") appeals the denial of his application for relief from deportation under § 212(c) of the Immigration and Nationality Act ("the Act"), 8 U.S.C. § 1182(c) and his request for waiver under § 212(h) of the Act, 8 U.S.C. § 1182(h). The Board of Immigration Appeals ("Board") affirmed the order of the Immigration Judge ("IJ"), finding Agbi deportable under § 241(a)(2)(A)(ii) of the Act and denying his application for relief. We affirm.

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Pursuant to that Rule, the Court has determined that this opinion should not be published.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

Agbi, a 44 year old native and citizen of Nigeria, entered the United States in 1975 as a nonimmigrant student. On May 15, 1979, his status was adjusted to that of a lawful permanent resident.

In 1981, Agbi was convicted of theft in Texas. He received probation for the offense. Then in 1983, he was charged with assault, which was reduced to a misdemeanor. Agbi was sentenced to six months' imprisonment.

In July 1985, Agbi was convicted for forgery, and was given probation. His probation was later revoked, and he was sentenced to four years' imprisonment. Then in 1987, Agbi pleaded guilty and was convicted of voluntary manslaughter. He was sentenced to fifteen years' imprisonment.

Based on Agbi's forgery and voluntary manslaughter convictions, deportation proceedings were commenced on February 5, 1993. During his hearing before the IJ, Agbi was found not deportable under 8 U.S.C. § 1251(a)(2)(C) because he was ultimately convicted of only assault. The IJ also found Agbi eligible to apply for relief under § 212(c) and § 212(h). The hearing was continued so that Agbi could filed applications for relief. Agbi subsequently filed an application for § 212(c) relief.

At the conclusion of the hearing, the IJ rejected Agbi's application for § 212(c) relief. The IJ found that, after balancing the adverse factors against Agbi's positive ones, relief was not warranted. Considering his history of violent behavior, the IJ determined that Agbi represented a danger to the community

and was not worthy of relief. Agbi subsequently filed a motion to reopen to apply for adjustment of status and a § 212(h) waiver.

On September 2, 1993, the Board affirmed the IJ's denial of § 212(c) relief. The Board found that although Agbi had demonstrated some positive equities, including his lengthy residence in the United States, his family ties[1], his employment history, and his education and substance abuse rehabilitation accomplishments, he had devoted many of his years in the United States to criminal activity, and that the hardship to his family was diminished given that he had lived apart from them in years. The Board also found Agbi ineligible for a waiver under § 212(h).

Agbi appealed the Board's decision to this Court. The Government sought a remand to allow the Board to reconsider its analysis as to the availability of § 212(h) relief, which was granted.

On June 16, 1994, the Board reaffirmed its earlier decision, except for its analysis as to § 212(h) relief. The Board determined that Agbi's request for a § 212(h) waiver on appeal amounted to a request that the Board remand the case to the IJ for reconsideration, which was subject to the requirements governing a motion to reopen. Given the fact that Agbi had an opportunity to apply for a § 212(h) waiver during his deportation hearing but failed to do so, the Board found that remand was not warranted.[2]

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[1] Agbi married a United States citizen in 1978. He has two children, who are also United States citizens, by another woman.

[2] The Board relied on the reopening regulations that specifically state that reopening is unavailable for an alien to

II.

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. INS*, 998 F.2d 291, 293 (5th Cir. 1993) (quoting *Howard v. INS*, 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. INS*, 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. INS*, 961 F.2d 555, 557 (5th Cir. 1992).

"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

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apply for discretionary relief "if it appears that the alien's right to apply for appeal for such relief was fully explained to him and an opportunity to apply therefor was afforded him at the former hearing." 8 C.F.R. §§ 3.2 and 242.22; *see also Gando-Coello v. INS*, 888 F.2d 197, 199 (1st Cir. 1989) (no reopening on the basis of evidence that was available at the time of the deportation hearing).

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)).

Agbi contends that the Board placed undue emphasis on his voluntary manslaughter conviction by characterizing it as an aggravated felony. Under 8 U.S.C. § 1101(a)(43), an "aggravated felony" is defined to include "...any crime of violence...for which the term of imprisonment imposed...is at least five years." The Immigration Act of 1990, Pub. L. No. 101-649 § 501(a)(3), 104 Stat. 4978 (Nov. 29, 1990), added crimes of violence to the definition of aggravated felony under § 1101(a)(43).

Our review of the record reveals that although the Board noted that Agbi had been convicted of an aggravated felony, it recognized that due to the date of the conviction, he was still eligible for relief under 8 U.S.C. § 1182(c). The Board then found that Agbi's adverse factors outweighed his positive equitites. We can find no reversible error in the Board's consideration of Agbi's request for § 212(c) relief.

III.

The Board's determination regarding whether an alien has met the regulatory requirements for reopening is reviewed for an abuse of discretion. *INS v. Abudu*, 485 U.S. 94, 104-05, 108 S.Ct. 904, 99 L.Ed.2d 90 (1988). We will uphold the decision of the Board "unless it is arbitrary, irrational, or contrary to law." *Molenda*, 998 F.2d at 294. Our review of the record reveals that the Board

did not abuse its discretion in relying the reopening regulations in determining that Agbi's request for a remand was precluded.

IV.

Agbi argues that the INS has erred by refusing to release him on bond, thereby inhibiting his ability to obtain relief from deportation. Agbi is presently in INS custody pursuant to § 242(a) of the Act, 8 U.S.C. § 1252(a). His appeal is made under § 106(a) of the Act, 8 U.S.C. § 1105(a)(2). This Court has determined that § 106(a) does not confer jurisdiction on the courts of appeals to review the bond determinations of the Attorney General made pursuant to § 242(a). *See Young v. U.S. Department of Justice*, 759 F.2d 450, 457 (5th Cir.), *cert. denied*, 474 U.S. 996, 106 S.Ct. 412, 88 L.Ed.2d 362 (1985). Limited review of immigration bond matters is available only in *habeas corpus* proceedings under § 242(a). *Id.*

V.

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