

UNITED STATES COURT OF APPEALS  
for the Fifth Circuit

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No. 94-40885  
Summary Calendar

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FRANKLIN C. BART-ADDISON, JR.,

Petitioner,

VERSUS

IMMIGRATION AND NATURALIZATION SERVICE,

Respondent.

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Petition for Review of an Order  
of the Board of Immigration Appeals  
(A20-603-230)

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(June 6, 1995)

Before GARWOOD, HIGGINBOTHAM and DAVIS, Circuit Judges.

PER CURIAM:<sup>1</sup>

The sole issue presented to us in this appeal is whether the Board of Immigration Appeals abused its discretion in denying petitioner's motion to reopen his deportation proceedings under Section 212(c) of the Immigration and Nationalization Act, 8 U.S.C. § 1182(c).<sup>2</sup>

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

<sup>2</sup> Bart-Addison urges us to consider whether his conviction for passing a non-sufficient funds check is a crime of moral turpitude that qualifies him for deportation. However, because Bart-Addison did not file the instant petition for review within 90 days of the final order of deportation, this court lacks

The BIA denied reopening on the two independent grounds that: (1) Bart-Addison failed to establish a prima facie case for § 212(c) relief and (2) even if Bart-Addison had met this burden, the BIA would have denied him § 212(c) relief as a matter of discretion. Because we find that the BIA did not err in denying relief on the basis of the second ground, we do not address the first. See Ogbemudia v. INS, 988 F.2d 595, 600 (5th Cir. 1993) (only one of three possible grounds is needed to support denial of reopening).

We review the BIA's denial of a motion to reopen deportation proceedings only for abuse of discretion. Ghassan v. INS, 972 F.2d 631, 635 (5th Cir. 1992), cert. denied, 113 S.Ct. 1412 (1993). When a denial of reopening is based on the BIA's determination that it would not grant discretionary relief under § 212(c), we review that underlying determination for abuse of discretion as well. Villarreal-San Miguel v. INS, 975 F.2d 248, 250 (5th Cir. 1992). We will uphold the denial of discretionary relief unless it is "arbitrary, irrational or contrary to law." Id. (quoting Diaz-Resendez v. INS, 960 F.2d 493, 495 (5th Cir. 1992)).

Because of his 1991 mail fraud conviction, the BIA required Bart-Addison to prove "unusual or outstanding equities" to merit relief. Bart-Addison introduced a number of positive factors, including his children and his wife, all of whom are U.S. citizens,

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jurisdiction to review this issue. 8 U.S.C. § 1105a(a)(1); Stone v. INS, 115 S.Ct. 1537 (1995). We note that because Bart-Addison's last motion to reopen was also not filed within 90 days, we would not have had jurisdiction even before Stone, under Pierre v. INS, 932 F.2d 418, 421 (5th Cir. 1991).

and the fact that he has lived in the U.S. for over twenty years. The BIA addressed each of the positive factors but also took into account, inter alia, that his children had not lived with him since 1984, that he had limited contact with them because of his incarceration for his mail fraud conviction and that his wife had been involved with his mail fraud scheme. Because of these diminishing features, the BIA concluded that Bart-Addison had not shown unusual or outstanding equities.

The BIA also found that Bart-Addison's positive equities were outweighed by three negative factors: (1) that Bart-Addison's mail fraud conviction stemmed from an elaborate scheme to obtain loans for a sham corporation; (2) that he had submitted a \$52,000 false insurance claim after the corporation had been placed into receivership; and (3) that the Immigration Judge (IJ) and the sentencing judge in his criminal case had found that his credibility was suspect. On this basis, the BIA found that it would not have granted § 212(c) as a matter of discretion.

Bart-Addison argues that the BIA erred by relying on his mail fraud conviction to require him to show unusual or outstanding equities because his crime was not sufficiently serious and was not a drug crime. However, the BIA found that Bart-Addison's mail fraud was serious because it extended over 2 years, it produced over \$1 million dollars in improperly obtained loans and resulted in a \$600,000 restitution order. In addition, the BIA is not limited to relying on drug crimes to trigger the unusual equities standard. Matter of Buscemi, 19 I & N Dec. 628 (BIA 1988).

Therefore, the BIA did not abuse its discretion by requiring Bart-Addison to show unusual or outstanding equities.

Bart-Addison also maintains that the BIA erred by concluding that his favorable equities were not unusual or outstanding and did not outweigh the negative factors in his case. However, our review of the BIA's decision shows that the BIA gave individualized consideration to each of the factors that Bart-Addison introduced.<sup>3</sup> As long as the BIA gives this consideration, it is not our place to tell the BIA what factors it must find compelling. Ghassan, 972 F.2d at 635. Additionally, this court cannot itself re-weigh the positive and negative equities to produce a different outcome. Molenda v. INS, 998 F.2d 291, 295 (5th Cir. 1993).

Bart-Addison particularly argues that the BIA erred by finding that he had introduced no evidence of rehabilitation. On appeal, Bart-Addison points to testimonials from his wife and others showing that he is rehabilitated. However, Bart-Addison did not point to this evidence in his motion to reopen; aside from passing assertions that he was rehabilitated, Bart-Addison's motion was silent on this point. Thus it was not an abuse of discretion for the BIA to find that he had not supported his motion with evidence

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<sup>3</sup> Bart-Addison argues that the INS justifies the denial of discretionary relief by relying on prior decisions of the BIA and the IJ that are outside the record in this appeal. However, Bart-Addison does not contend that the INS misrepresents the larger administrative record or that the BIA's factual findings were not supported by substantial evidence. Because our decision here depends solely on whether the BIA gave proper consideration to the equities that Bart-Addison himself introduced, we find it unnecessary to enlarge the current record.

of rehabilitation. See Martinez v. INS, 970 F.2d 973, 975 (1st Cir. 1992).

AFFIRMED.