UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 94-41114
Summary Calendar

ANTHONY OGUGUA UDENZE,

Petitioner,

versus

IMMIGRATION AND NATURALIZATION SERVICE,

Respondent.

Petition for Review of
an Order of the Board of Immigration Appeals
(INS No. A28-333-372)

(June 5, 1995)

Before POLITZ, Chief Judge, JONES and BARKSDALE, Circuit Judges.

POLITZ, Chief Judge:[*]

Anthony Ogugua Udenze, a citizen of Nigeria, petitions for review of a final order of deportation by the Board of Immigration Appeals. We deny review.

Background

In 1979 Udenze entered the United States as a nonimmigrant

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

student. In 1987, three years after the completion of his studies, Udenze married an American citizen and received conditional permanent resident status. During an I.N.S. interview in 1989 involving the couple's joint petition to remove Udenze's conditional status, Udenze's wife disclosed that the couple had separated and that she had moved to California. The joint petition was then withdrawn and the I.N.S., deeming the marriage a sham, terminated the conditional permanent resident status and instituted deportation proceedings. After determining that deportation was proper, the immigration judge found that deportation to Nigeria would cause "extreme hardship" to Udenze because of his susceptibility to cerebral malaria and, pursuant to 8 U.S.C. § 1254, suspended the deportation.

The I.N.S. appealed to the Board of Immigration Appeals which reversed, concluding that Udenze's assertions of hardship did not rise to the extreme level necessary to justify suspension of deportation. The BIA vacated the suspension order, giving Udenze the option of voluntary departure in lieu of deportation. Udenze timely petitioned for review.

Analysis

Udenze first challenges the I.J.'s finding of deportability based on the conclusion that his 1987 marriage was a sham. Udenze contends that the I.J. erroneously focused upon conditions existing at the time of the hearing and not upon those present at the time of the marriage. Udenze did not raise these arguments or challenge any aspect of the I.J.'s finding of deportability before the BIA.

We may not evaluate the merits of this claim.[1]

Udenze next contends that the BIA erred in its assessment of the claim of hardship, making its failure to suspend his deportation an abuse of discretion. Section 244 of the Immigration and Nationality Act allows discretionary suspension of deportation if an alien shows that he has been continuously present in the United States for at least seven years prior to applying for suspension, has exhibited good moral character, and

> is a person whose deportation would, in the opinion of the Attorney General, result in extreme hardship to the alien or to his spouse, parent, or child, who is a citizen of the United States. . . .[2]

In making such a determination, the Board must reach a reasoned conclusion on the alien's specific assertions of hardship that are based on evidence.[3] Administrative findings regarding the existance of extreme hardship are reviewed for abuses of discretion, with such abuses being present only where the BIA fails to give "any consideration"[4] to the alien's assertions of hardship or where it fails to find extreme hardship when the demonstrated conditions of hardship are "uniquely extreme . . . and so severe

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[1]**Townsend v. I.N.S.**, 799 F.2d 179 (5th Cir. 1986). Udenze also maintains that his counsel's failure to challenge the finding of deportability is but one of many errors constituting ineffective assistance of counsel. However, as no aspect of this claim was raised before or ruled upon by the BIA, it is outside the scope of our review.

[2]8 U.S.C. § 1254(a)(1).

[3]**Diaz-Resendez v. I.N.S.**, 960 F.2d 493 (5th Cir. 1992), citing **Ramos v. I.N.S.**, 695 F.2d 181 (5th Cir. 1983).

[4]**Sanchez v. U.S.I.N.S.**, 755 F.2d 1158, 1160 (5th Cir. 1985) (emphasis in original).

that any reasonable person would necessarily conclude that the hardship is extreme."[5]

Udenze first asserts that the BIA improperly failed to consider the fact that, during the pendency of this case, he has married another American citizen, fathered children, and that his new family will suffer extreme hardship if he is deported. As Udenze did not present any information regarding the existence and effects of this new union to the I.J. or BIA, these facts are beyond the administrative record and outside the scope of our review.[6]

Udenze also contends that the Board failed to consider and give proper effect to his prior assertions of extreme hardship attendant upon a forced repatriation to Nigeria, such as his heightened susceptibility to a relapse of cerebral malaria, the severence of his ties to the community, the adverse economic and financial effects from the grim economic conditions in Nigeria, and his difficulty in obtaining an immigrant visa once there. The BIA considered each of these assertions of hardship and concluded that their individual and cumulative impact was not extreme. We

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[5]**Hernandez-Cordero v. U.S.I.N.S.**, 819 F.2d 558, 563 (5th Cir. 1987) (*en banc*).

[6]**Rodriguez v. INS**, 9 F.3d 408 (5th Cir. 1993). Although we may order a remand to consider this additional material evidence pursuant to 28 U.S.C. § 2347(c), we decline to do so as Udenze fails to show reasonable grounds for his failure to submit this evidence to the agency. **Miranda-Lores v. INS**, 17 F.3d 84 (5th Cir. 1994). The instant claim is more properly the subject of a motion to reopen the proceedings before the BIA pursuant to 8 C.F.R. §§ 3.2 and 3.8. See **Rogue-Carranza v. INS**, 778 F.2d 1373 (9th Cir. 1985).

perceive no error.

The record reflects that Udenze contracted cerebral malaria during a 1988 visit to Nigeria and, despite its severity, the Nigerian hospital staff successfully treated the malady. Although Udenze claimed that a return to Nigeria presents the possibility of a life-threatening relapse, the BIA found otherwise, relying upon a letter from the University of Nigeria Teaching Hospital that both recounted its success in treating Udenze's illness and urged him, in light of the dangerous nature of his illness, to exercise great caution in any subsequent visits to Nigeria. Despite Udenze's opinion to the contrary, the BIA correctly noted that the letter did not advise against Udenze returning to Nigeria; rather, it merely emphasized that he should take adequate precautions. The BIA concluded that the letter and testimony in the record demonstrated that Nigerian medical personnel can provide the proper treatment, that Udenze's health was sound, and that this asserted hardship was not extreme.

The BIA considered Udenze's claim of hardship due to the severing of his community ties. The decision notes Udenze's failure to demonstrate the existence of any family members, business ties, or property ownership in the United States that would justify his contention that deportation would present extreme hardship.[7]

The BIA also considered the economic and financial

[7]Udenze's claim that his departure would cause the community extreme hardship is irrelevant. **I.N.S. v. Hector**, 479 U.S. 85 (1986).

consequences resulting from Udenze's forced return to Nigeria. He failed to show any harm beyond a decrease in his standard of living. Adverse economic effects of deportation are, standing alone, insufficient to justify a finding of extreme hardship.[8] The difficulty in securing an immigrant visa was considered insufficient, either individually or in the aggregate, to justify suspension of deportation.

As we perceive neither error nor abuse of discretion warranting review, the petition for review is DENIED.

[8]**Zamora-Garcia v. U.S.I.N.S.**, 737 F.2d 488 (5th Cir. 1984).