

UNITED STATES COURT OF APPEALS
For the Fifth Circuit

No. 94-41319
Summary Calendar

HENRY MARTIN ROCHA,

Petitioner,

VERSUS

IMMIGRATION AND NATURALIZATION SERVICE,

Respondent.

Petition for Review of an Order of
the Immigration and Naturalization Service
(A26 548 709)

(July 3, 1995)

Before KING, JOLLY and DeMOSS, Circuit Judges.

PER CURIAM:*

BACKGROUND

Henry Martin Rocha is a thirty-one year old, native-born Nicaraguan national who entered the United States on October 6, 1981, as a nonimmigrant visitor for pleasure and was authorized to

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

remain in the United States until June 9, 1982. He submitted a petition for asylum on June 28, 1982, alleging that he would be persecuted by the Nicaraguan government if he was returned to that country. The request for asylum was denied and the Immigration and Naturalization Service (INS) initiated deportation proceedings on August 18, 1989.

In response to a show cause order, Rocha submitted an asylum application¹ and applied for suspension of deportation under 8 U.S.C. § 1253. Following an evidentiary hearing the immigration judge (IJ) denied Rocha's request for asylum, withholding of deportation, and suspension of deportation. The Board of Immigration Appeals (BIA) affirmed the decision of the IJ and dismissed the appeal. Rocha has timely petitioned this court for review of the decision of the BIA.

OPINION

Rocha argues that the BIA erred in concluding that he was not eligible for asylum. This court must affirm the BIA's determination that the petitioner is ineligible for asylum or withholding of deportation if the decision is supported by substantial evidence in the record. Faddoul v. INS, 37 F.3d 185, 188 (5th Cir. 1994); see 8 U.S.C. § 1105a(a)(4) (1970). This court will not reverse the BIA's finding merely because it disagrees with the BIA's evaluation of the facts. Jukic v. INS, 40 F.3d 747, 749 (5th Cir. 1994). Under the substantial evidence test this court

¹ An application for asylum is also considered a request for withholding of deportation. See 8 C.F.R. § 208.3(b).

may not reverse the BIA's factual determination unless the evidence compels it. Chun v. INS, 40 F.3d 76, 78 (5th Cir. 1994). The alien must demonstrate the evidence was so compelling that no reasonable factfinder could conclude against it. Id.

To be entitled to asylum an alien must demonstrate "well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion." Faddoul, 37 F.3d at 188. An alien's subjective fears of persecution will satisfy this standard if "a reasonable person in [his] circumstances would fear persecution if [he] were to return to [his] native country." Id. (internal quotations and citation omitted). Once an alien demonstrates eligibility for asylum, the decision to grant asylum is within the discretion of the IJ. Id. This court will uphold the IJ's determination whether or not to grant asylum unless the petitioner shows that the action was arbitrary, capricious, or an abuse of discretion. Jukic, 40 F.3d at 749.

Although there is no precise definition of persecution, this court has construed the term to require a "showing by the alien that harm or suffering will be inflicted on her in order to punish her for possessing a belief or characteristic a persecutor sought to overcome." Faddoul, 37 F.3d at 188 (internal quotation and citation omitted). There must be some particularized connection between the feared persecution and the alien's race, religion, nationality, or other listed characteristic. Id. To demonstrate such a connection the alien must present "specific, detailed facts

showing a good reason to fear that he or she will be singled out for persecution." Id. (internal quotations and citation omitted).

The BIA found that Rocha has not been persecuted in the past by the Nicaraguan government and, even if he had suffered past persecution, the change in the political environment, including the defeat of the Sandinistas in the 1991 elections, made future persecution unlikely. These findings are supported by substantial evidence.

The evidence in the record establishes that Rocha's father, Ernesto Rocha, had been associated with the liberal Somoza government and as a result was employed as an accountant with a government hospital. After the Sandinistas gained power, Mr. Rocha was fired from his job, and Rocha was forced to stop attending a school associated with the Somoza government. Rocha's mother, Celia Rocha, was also associated with the Somoza government as president of the defense committee, a neighborhood association which was responsible for collecting money and taxes to fund activities in the community. After the Sandinistas gained power, the organization was changed to the Committee of Civil Defense, and Mrs. Rocha was no longer associated with the group because she was not politically aligned with the new government.

In 1980, after Mrs. Rocha quit her association with the Committee of Civil Defense, Rocha, his father, and his two brothers were arrested and detained for five days because a neighbor reported that the Rochas were counter-revolutionaries and were storing arms and uniforms at their home. Although Rocha was housed

under uncomfortable conditions and was interrogated by the Sandinistas, he was not physically harmed. All of the members of the Rocha family were released after five days because Mrs. Rocha's cousin was associated with the Sandinista government. After his release, Rocha was granted a passport and permission to leave Nicaragua. In 1982, after Rocha had arrived in the United States, Mrs. Rocha was beaten by the divine turbans, a pro-Sandinista group, during a religious procession and was denied medical care for her injuries.

Since Rocha left Nicaragua, however, the political climate of the country has changed. In 1990 the Sandinistas lost power and a new government was democratically elected. The United States State Department issued an advisory opinion that, given the political change in Nicaragua, Rocha does not have a well-founded fear of persecution upon his return to Nicaragua. Because Rocha did not suffer extensive, individualized persecution by the Sandinistas prior to his arrival in the United States, and because of the change of government since his departure, Rocha has not demonstrated that the BIA's finding that he does not have a well-founded fear of persecution is not supported by substantial evidence. See Rojas v. INS, 937 F.2d 186, 187-88, 190 (5th Cir. 1991).

Rocha also argues that the BIA's finding that he was not eligible for withholding of deportation is not supported by substantial evidence. To be eligible for withholding of deportation an alien must demonstrate a "clear probability" of

persecution upon return. Faddoul, 37 F.3d at 188. This standard contains no subjective component but requires a higher objective likelihood of persecution than the "well-founded fear" standard for asylum. If an alien demonstrates a clear probability of persecution the IJ must withhold deportation as long as the threat of persecution persists. Id. Because Rocha cannot satisfy the lesser "well-founded fear" of persecution standard, he cannot show a clear probability of persecution required to be eligible for withholding of deportation. Id. at 190 n.7; Jukic, 40 F.3d at 750.

Rocha also argues that the BIA erred in denying his request for suspension of deportation. To be eligible for suspension of deportation an alien must have been physically present in the United States for a continuous period of at least seven years immediately preceding the application; be a person of good moral character; and be 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 or an alien lawfully admitted for permanent residence.² Hernandez-Cordero v. INS, 819 F.2d 558, 560 (5th Cir. 1987) (en banc). The burden is on the alien to demonstrate eligibility for a suspension of deportation, and even if the eligibility

² Because Rocha is single and childless and, at the time he requested suspension of deportation, his mother was not a lawful permanent resident, the BIA could consider only the potential hardship to Rocha when evaluating the effect of deportation. See INS v. Hector, 479 U.S. 85, 88 (1986) (the BIA is not required to consider the hardship to a party other than those defined in § 1254(a)(1)).

requirements are met, the Attorney General retains the discretion to refuse to suspend deportation. Id.

The BIA findings of continuous residency and good moral character are reviewed under the substantial evidence test. Id. The issues of continuous residency and good moral character are not in dispute.

The finding regarding extreme hardship is reviewed for an abuse of discretion. The BIA has the discretion to define extreme hardship narrowly, and this court may find that the BIA abused its discretion only in a case in which "the hardship is uniquely extreme, at or closely approaching the outer limits of the most severe hardship the alien could suffer and so severe that any reasonable person would necessarily conclude that the hardship is extreme."

Rocha argues that he will suffer extreme hardship if he is deported because he came to this country in his late teens and finished his education here; most of his immediate family lives in the United States; he is a valued employee at the Hyatt Regency; and he will suffer economic hardship if he returns to Nicaragua. Although Rocha has spent the last fourteen years in the United States and most of his immediate family currently reside in the United States,³ he has not demonstrated "extreme hardship." Mere economic and social hardship which any alien would experience upon return to his native country is insufficient to satisfy this narrow

³ Rocha's sister has been granted asylum, and his mother was granted suspension of deportation while his appeal was pending before the BIA.

exception. See Hernandez-Cordero v. INS, at 564 (no extreme hardship because aliens would suffer economic hardship); Youssefinia v. INS, 784 F.2d 1254, 1262 (5th Cir. 1986) (economic and social difficulties alien and United States-born child might experience as a result of Iran's then-current cultural upheaval do not amount to extreme hardship).

AFFIRMED.