

UNITED STATES COURT OF APPEALS

For the Fifth Circuit

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No. 94-41360

Summary Calendar

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AUDENCIO ALEJO-MENDEZ,

Petitioner,

VERSUS

IMMIGRATION AND NATURALIZATION SERVICE,

Respondent.

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Review of a Final Order of the Board of Immigration Appeals

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(No. A28 679 094)

August 30, 1995

Before KING, SMITH, and BENAVIDES, Circuit Judges.

PER CURIAM:\*

Petitioner, Audencio Alejo-Mendez, appeals from a decision of the Board of Immigration Appeals (the BIA), which denied Alejo-

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Pursuant to that Rule, the Court has determined that this opinion should not be published.

Mendez's application made pursuant to 8 U.S.C. § 1254(a)(1) for a suspension of deportation based on the applicant's claim of "extreme hardship."<sup>1</sup> Finding that the BIA's decision reflects that it did not err procedurally or substantially in concluding that Appellant's deportation would not impose extreme hardship, we AFFIRM.

#### Argument and Analysis

Alejo-Mendez argues that the BIA erred in making the following factual determinations supporting its finding of no extreme hardship, for which he alleges no substantial evidence exists in the record: (1) that Alejo-Mendez had not had contact with any of his children from his first marriage for several years; (2) that Alejo-Mendez did not present evidence that his present wife will always need his assistance and that no one else can assist her; (3) that Alejo-Mendez's wife's medical condition could not be properly treated if she moved to Mexico; and (4) that there was "no indication" that Alejo-Mendez's wife could not retain employment upon recovery, or that she had no other means of support aside from Alejo-Mendez. Alejo-Mendez does not point to a specific factor relevant to a determination of "extreme hardship" that the BIA overlooked or failed to consider, but argues that in regard to its consideration of these factors, its factual findings were wrong. Alejo-Mendez contends that these incorrect factual findings resulted in an improper weighing of the equities and a failure to

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<sup>1</sup> The applicant's continuous residency and good moral character which are also required for a suspension of deportation under § 1254 (a)(1), are not an issue in the review.

consider positive factors. Thus, Alejo-Mendez presents a challenge to the BIA's procedural responsibilities and its substantive determination in its consideration of the factors relevant to an "extreme hardship" determination.

The standard of review of the BIA's "extreme hardship" determination abuse of discretion. *Hernandez-Cordero v. INS*, 819 F.2d 558, 560 (5th Cir. 1987)(en banc). Specifically, this Court's review of the BIA's procedural responsibilities in its "extreme hardship" determination is limited to a determination whether the court considered all relevant factors, individually and collectively, and demonstrated this consideration in some manner. *Id.* at 563.

#### Procedural Review

The BIA specifically stated its findings regarding each factor that Alejo-Mendez challenges on appeal. After a hearing, the BIA introduced its substantive determination of "extreme hardship" by stating that it "considered all of the relevant factors . . . ." The BIA determined that Alejo-Mendez failed to establish that his deportation would cause hardship that was distinguishable from any other deportation.

Regarding Alejo-Mendez's contact with his children in the United States, the BIA specifically concluded that "he has sent them support in the past. However, his testimony indicated that these children were currently in the United States, but that he has not had contact with them for several years."

The BIA specifically concluded based on the evidence in the

record, Alejo-Mendez's wife would not suffer extreme hardship if he were deported, giving consideration to her health, her injury, her possibility of recovery, and her ability to support herself in the future.

Thus, the BIA indicated its reflection on Alejo-Mendez's family ties, his wife's health concerns, and the impact of his deportation on his wife and announced its decision in terms sufficient to perceive that it gave ample consideration to these challenged "extreme hardship" factors. See *Hernandez-Cordero*, 819 F.2d at 563.

The BIA demonstrated its collective consideration of all factors based on the totality of the circumstances and concluded that Alejo-Mendez did not make an "adequate showing of extreme hardship upon deportation," and the BIA did not "utterly fail" to consider the relevant hardship factors, individually and collectively. The BIA's decision reflects that it heard and considered the issues raised by Alejo-Mendez and did not merely react. Having considered all the factors relevant to its determination of no "extreme hardship" that Alejo-Mendez challenges on appeal, and having specifically stated its support for these findings, the BIA did not err in its procedural responsibilities.

#### Substantive Review

Alejo-Mendez challenges the BIA's substantive determination on appeal by contending that the BIA wrongly concluded that his deportation would not cause extreme hardship on his wife by its improper "weighing of the equities."

In its substantive review, this Court must give extreme deference to the BIA's finding of a no "extreme hardship," and may overturn the BIA's determination only in a case "approaching the outer limits of the most severe hardship." See *Hernandez-Cordero*, 819 F.2d at 561-63.

When measured against this standard, the BIA did not abuse its discretion in finding that the hardship facing Alejo-Mendez and his wife was not "extreme." Alejo-Mendez presented evidence that his deportation would be detrimental to his wife's health condition because she was presently physically dependent upon him; however, he did not present evidence that his hardship was "uniquely extreme" or one of the most severe hardships that a deported alien would face.

Thus, the BIA did not abuse its discretion in its substantive determination, and we AFFIRM.