

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-41365
Summary Calendar

CHINEDU OBIDIEGWU,

Petitioner,

v.

IMMIGRATION AND NATURALIZATION
SERVICE,

Respondent.

Petition for Review of an Order
of the Board of Immigration Appeals
(A24 810 292)

(August 31, 1995)

Before KING, SMITH, and BENAVIDES, Circuit Judges.

PER CURIAM:*

Chinedu Obidiegwu seeks review of the dismissal of his appeal by the Board of Immigration Appeals ("BIA"). Obidiegwu had appealed the Immigration Judge's denial of his request for suspension of deportation. Finding no merit in his contentions, we affirm the order of the BIA.

*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 Pursuant to that Rule, the court has determined that this opinion should not be published.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. FACTUAL AND PROCEDURAL BACKGROUND

Chinedu Obidiegwu is a thirty-five year old native and citizen of Nigeria who entered the United States as a nonimmigrant student in 1980. With the exception of a brief visit to Nigeria in 1982, Obidiegwu has remained in the United States since his arrival. On September 25, 1987, he married his present wife, Allyson, a United States citizen. Their marriage was invalid at the time, however, because both were legally married to others. The Obidiegwus have since terminated these previous marriages. They have two children, Gregory and Ikemefuna, ages six and five respectively. Allyson also has a fourteen year-old son, Ronald, from a previous marriage. On March 19, 1990, she petitioned for an immigrant visa on Obidiegwu's behalf. The Immigration and Naturalization Service ("INS") denied the petition on the grounds that Obidiegwu's 1983 marriage to his former wife had "been entered into for the purpose of evading the immigration laws"¹ and that Allyson had not presented any evidence that one of her earlier marriages had been terminated.²

On April 23, 1990, Obidiegwu pleaded guilty in Texas state court to causing bodily injury to a child by striking Ronald on the face and back with a belt. On April 24, the INS issued an Order to Show Cause ("OSC") charging that Obidiegwu was deportable for failing to comply with the conditions of his

¹See 8 U.S.C. § 1154(c) (1988).

²See 8 C.F.R. § 204.2(c)(2) (1990).

nonimmigrant status because he was no longer a student. On July 19, 1990, Obidiegwu entered into a stipulation through which he admitted the allegations in the OSC, conceded deportability, designated Nigeria as the country for deportation, and stated his intention of filing for suspension of deportation. The INS agreed not to oppose voluntary departure.

A deportation hearing was held on January 18, 1991. The Immigration Judge concluded that Obidiegwu had failed to establish that his deportation would cause "extreme hardship" for Obidiegwu or his family. The Immigration Judge also noted that "[Obidiegwu's] conviction for causing Injury to a Child suggests that the respondent has not had full respect for the laws of this country." The Immigration Judge denied Obidiegwu's request for suspension of deportation but granted him voluntary departure through April 16, 1991. Obidiegwu appealed the Immigration Judge's decision. On November 29, 1994, the BIA dismissed Obidiegwu's appeal and reinstated voluntary departure. Obidiegwu filed a timely petition to this court to review the BIA's order.

II. ANALYSIS

In order to be eligible for a suspension of deportation, an alien must (1) have been physically present in the United States for a continuous period of at least seven years immediately preceding the application; (2) establish his good moral character; and (3) show that deportation would result in "extreme hardship" to himself or to a citizen or lawful permanent resident

spouse, parent, or child. 8 U.S.C. § 1254(a)(1) (1988); Lopez-Rayas v. INS, 825 F.2d 827, 829 (5th Cir. 1987) (per curiam).

The alien bears the burden of demonstrating his eligibility for a suspension of deportation. Id. Even if the alien can establish his eligibility by satisfying the statutory requirements, the Attorney General retains the discretion to grant or deny relief.³ Hernandez-Cordero v. United States INS, 819 F.2d 558, 561 (5th Cir. 1987) (en banc). We have described this decision as a matter of grace, similar to a Presidential pardon. Id.

With respect to statutory eligibility, our standard of review depends on which requirement is at issue. We review the BIA's findings of continuous presence in the United States and good moral character under the "substantial evidence" test. Id. at 560. We review findings regarding "extreme hardship" under the more stringent "abuse of discretion" standard. Id. With respect to the Attorney General's exercise of discretion in granting or denying relief to an otherwise eligible alien, our review is "strictly limited because the subject is uniquely within the competence and power of the political branches." Id. at 561.

In the case sub judice, Obidiegwu challenges the BIA's findings that his deportation would not cause "extreme hardship" to himself or to his family and that he failed to establish his

³The Attorney General's power to approve or deny applications for suspension of deportation has been delegated to Immigration Judges. 8 C.F.R. § 242.8 (1995). The authority to review those decisions has been delegated to the BIA. 8 C.F.R. § 242.21 (1995).

good moral character.⁴ Specifically, Obidiegwu contends that the BIA made several errors in its consideration of the emotional and political hardship that his wife and children would face if he were deported. First, he argues that the BIA has vitiated the emotional hardship factor in his case by stating that any hardship due to separation would be a result of his family's decision not to accompany him to Nigeria. He also disputes the propriety of the BIA's conclusion that his family will be better off without him, when his family members gave sworn statements to the contrary. Finally, he contends that the BIA incorrectly applied our decision in Farzad v. INS, 802 F.2d 123 (5th Cir. 1986), to preclude consideration of the political hardship his family might face in Nigeria. As for the issue of his good moral character, Obidiegwu argues that it is inconsistent for the BIA to deny him suspension on this ground, while reinstating voluntary departure, which also requires proof of moral character. He also contends that the BIA erred in relying solely on his conviction for striking his stepson to demonstrate lack of good moral character.

With respect to Obidiegwu's contentions regarding "extreme hardship," we note at the outset that the BIA has "unfettered" discretion to restrict the meaning of this term. Hernandez-Cordero, 819 F.2d at 562. Consequently, our substantive review of a "no extreme hardship" determination is "exceedingly narrow."

⁴The issue of Obidiegwu's continuous presence in the United States is not in dispute.

Id. We 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." Id. at 563. Our procedural review of a "no extreme hardship" determination is similarly limited. We will examine the BIA's decision only to determine whether the BIA has given "any consideration" to the relevant hardship factors, both individually and collectively. Id.

Applying this standard, we find that the BIA did not abuse its discretion in making its substantive determination of "no extreme hardship." While Obidiegwu claims that he and his family will suffer emotional and political hardship if he is deported, he has not produced any evidence that such hardship would be "uniquely extreme." As the BIA noted, Obidiegwu spent his formative years in Nigeria, where twelve of his thirteen siblings still reside. His father is the king of a tribe and a former ambassador to England. Obidiegwu also has substantial holdings in Nigeria, including property worth \$150,000 and stocks and bonds with an estimated value of \$50,000. Without discounting the attendant difficulties of being separated from one's spouse and children and the potential for political oppression in a dictatorship such as Nigeria, we conclude that Obidiegwu's extensive family ties and considerable assets in his native

country counsel against a finding that his situation is unique or severe.

We also find that the BIA did not abuse its discretion with respect to its procedural responsibilities. Obidiegwu's contention that the BIA ignored the emotional hardship factor by relying on the fact that his family could join him in Nigeria is not well founded. Whatever importance the BIA attached to this option, it also considered the emotional hardship that the family would suffer if Allyson and the children remained in the United States. Specifically, the BIA considered Obidiegwu's family ties in Nigeria as well as his past abusive behavior toward Allyson and Ronald.

Obidiegwu's second argument with respect to emotional hardship goes beyond the scope of our review. Obidiegwu contends that it was error for the BIA to conclude that his children might benefit from his departure, despite the fact that both Allyson and Ronald testified that they wanted him to stay. We note that the BIA did consider this testimony along with the history of abuse in the Obidiegwu household in reaching its conclusion. Our analysis must end there. Whatever weight the BIA afforded to this evidence in making its determination, we lack the authority to review it. Hernandez-Cordero, 819 F.2d at 563.

Finally, we find no merit in Obidiegwu's argument that the BIA inadequately considered the political persecution that his family might suffer if they accompanied him to Nigeria. Specifically, Obidiegwu contends that the BIA incorrectly relied

on our decision in Farzad v. INS, 802 F.2d 123 (5th Cir. 1986), as authority for rejecting the persecution claim. In Farzad, we stated that it was within the BIA's discretion to conclude that "claims of political persecution have no relation to determining whether 'extreme hardship' exists, which would warrant suspension of deportation." Id. at 126. Obidiegwu argues that the rule announced in Farzad applies only when an alien alleges that he faces political persecution in his native country because, in that instance, "the alternative procedure of filing for asylum is available." Accordingly, Obidiegwu contends that it was error for the BIA to apply this rule to his wife and children, who are United States citizens and therefore cannot present their persecution claims in an asylum hearing. Because we find that the BIA considered other factors in evaluating the political hardship that Obidiegwu's family might face in Nigeria, we need not address whether the BIA incorrectly applied Farzad. In particular, the BIA noted that Obidiegwu himself had not applied for asylum or withholding of deportation. While this fact speaks most directly to Obidiegwu's possible persecution in Nigeria, the BIA could also consider it relevant in evaluating the persecution of his family. Furthermore, the BIA stated that Obidiegwu had not offered any evidence to support his claim that his opposition to the Nigerian government would lead to the persecution of his wife and children.

In sum, we find that the BIA did not abuse its discretion in determining that deportation would not cause Obidiegwu or his

family "extreme hardship." Obidiegwu's failure to meet this requirement establishes that he is ineligible for suspension of deportation. Therefore, we need not address his arguments that the BIA erred in finding that he could not meet the good moral character requirement. See Nunez-Payan v. INS, 811 F.2d 264, 266 n.2 (5th Cir. 1987) (declining to consider petitioner's "extreme hardship" and continuous presence arguments after determining that petitioner failed to establish good moral character).

III. CONCLUSION

For the foregoing reasons, the judgment of the BIA is AFFIRMED.