

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-4379
Summary Calendar

MARIA ICTALINA NUNEZ QUIROZ,

Petitioner,

versus

IMMIGRATION AND NATURALIZATION
SERVICE,

Respondent.

Petition for Review of an Order of the
Immigration and Naturalization Service
(A72-016-677)

(December 13, 1993)

Before GARWOOD, SMITH and DeMOSS, Circuit Judges.*

PER CURIAM:

Petitioner's deportability is plain and uncontested and we reject all of her contentions except that relating to the refusal to consider her request for asylum. As to the latter, we hold that under all the circumstances of this particular case, the action of

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

the majority of the Board of Immigration Appeals (BIA) in sustaining the Immigration Judge's (IJ) denial of any requested continuance from October 21, 1992 in which to submit a request for asylum and in refusing to consider the request for asylum filed with the BIA while the appeal was still pending undecided before it, amounted to a clear abuse of discretion and denied petitioner fundamental fairness. See, e.g., *Partible v. INS*, 600 F.2d 1094 (5th Cir. 1979); compare *Ogbemudia v. INS*, 988 F.2d 595 (5th Cir. 1993).

In this connection we note, *inter alia*, the following (approximately the same matters noted by the member of the BIA who dissented on essentially this basis): Petitioner, who had not previously been in the United States and who did not speak English, entered without inspection on or about August 28, 1992, was apprehended August 30 and remained in detention thereafter until sometime following the October 21 completion of proceedings before the IJ; during some portion of this time the detention center was under medical quarantine, and sometime thereafter petitioner became ill; she was without funds and was unable to procure counsel; she advised the IJ of her desire for counsel, inability to obtain same and desire for more time to do so; she advised she feared persecution in her native Honduras and wished to apply for asylum; although she did not complete the formal application within the one week allowed, the form is somewhat complicated and must be completed in English and she was unable to procure help, but she did, within the allowed time, complete in Spanish a five page statement of her reasons for fearing persecution in Honduras on

account of her political activities there, which at least facially is not frivolous as a basis for claiming asylum, and she subsequently completed and filed with the BIA, before it acted on her appeal, a formal asylum application in English.

Accordingly, the decision of the BIA as to deportation is affirmed but its decision as to asylum is reversed, and the entire cause is remanded to the BIA for further proceedings not inconsistent herewith in reference to petitioner's request for asylum. The further proceedings may be before the BIA, and/or the IJ, as the BIA may direct.

REVERSED IN PART AND CAUSE REMANDED