

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-5332
Summary Calendar

PAUL ABNER,

Petitioner,

versus

IMMIGRATION AND NATURALIZATION
SERVICE,

Respondent.

Petition for Review of an Order of the
Immigration and Naturalization Service
(A71-546-024)

(May 17, 1994)

Before JOLLY, WIENER, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

In this appeal, an alien seeks review of a decision by the Board of Immigration Appeals ("BIA") denying his application for asylum in the United States. Because we hold that the evidence presented by the alien fails to compel a conclusion that he would be persecuted for his political opinion upon return to his native

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

country, we affirm the Board's decision.

I

Paul Abner is an alien who is a native and citizen of Nicaragua. Abner entered the United States as a nonimmigrant visitor with authorization to remain until December 18, 1986. After Abner's visa expired, he failed to leave this country. On October 25, 1991, Abner was convicted of the sale or purchase of cannabis and unlawful possession of cannabis.¹

II

On April 2, 1993, the Immigration and Naturalization Service ("INS") instituted deportation proceedings against Abner alleging that he was deportable pursuant to 8 U.S.C. § 1251(a)(1)(B) because he was a nonimmigrant alien who had remained in the United States longer than permitted. The INS later added the charge that Abner was deportable pursuant to 8 U.S.C. § 1251(a)(2)(B)(i) because he had been convicted of a drug trafficking offense under state law.

On May 7, 1993, Abner admitted that he was deportable on the grounds asserted by the INS, but expressed a fear of persecution if he was returned to Nicaragua. The immigration judge granted Abner seven days to file an asylum application. When Abner failed to do so, the immigration judge found that Abner had abandoned all claims for relief and should be deported to Nicaragua.

¹Cannabis is a form of marijuana.

Abner appealed to the BIA claiming that he had unsuccessfully attempted to file his asylum application with the immigration judge. Abner submitted his asylum application to the BIA and claimed that deteriorating conditions in Nicaragua increased his danger of persecution. The BIA dismissed Abner's appeal because he failed to explain adequately why he had filed his asylum application late and because he had not shown a prima facie case of eligibility for asylum that would warrant reopening his case.

On August 11, 1993, Abner moved the BIA to reconsider and reopen his case based on new circumstantial evidence that corroborated his fear of persecution. The BIA denied Abner's motion on the alternative grounds that he had been convicted of an aggravated felony and that his evidence of impending persecutions was unpersuasive. Abner brought this appeal.

III

On appeal, Abner argues that the BIA erred in not granting him asylum and withholding deportation.² First, Abner argues that his evidence establishes a prima facie case that he has a reasonable fear of persecution that warrants a grant of asylum under 8 U.S.C. §§ 1158(a) and 1101(a)(42)(A). Second, Abner argues that because his drug conviction in Florida was not an "aggravated felony" under 8 U.S.C. § 1101(a)(43), his deportation is not mandated by 8 U.S.C.

²Abner, in effect, concedes that he is a deportable alien under 8 U.S.C. § 1251(a)(1) due to the expiration of his visa. He nonetheless challenges the Attorney General's refusal to exercise her discretion under 8 U.S.C. § 1158(a) to grant him asylum.

§ 1158(d). Because we find that Abner's first argument is without merit, we do not address his second argument.

To qualify for asylum, Abner must establish a "well-founded fear" of persecution for his political opinion if he was returned to Nicaragua. See 8 U.S.C. §§ 1158(a), 1101(a)(42)(A) (1988).³ "An alien possesses a well-founded fear of persecution if a reasonable person in [his] circumstances would fear persecution if [he] were to be returned to [his] native country." Guerva-Flores v. INS, 786 F.2d 1242, 1249 (5th Cir. 1986), cert. denied, 480 U.S. 930, 107 S.Ct. 1565, 94 L.Ed.2d 757 (1987). To meet his burden of establishing a well-founded fear of persecution, Abner must "present specific facts through objective evidence if possible, or through his or her own persuasive, credible testimony, showing actual persecution or detailing some other good reason to fear persecution." Ganjour v. INS, 796 F.2d 832, 837 (5th Cir. 1986) (quoting Carvajal-Munoz v. INS, 743 F.2d 562, 576 (7th Cir. 1984)). See 8 C.F.R. § 3.8 (as amended in 1983) ("Motions to reopen shall state the new facts to be proved at the reopened hearing and shall be supported by affidavits or other evidentiary material."). "[I]f [an alien] seeks to obtain judicial reversal of the BIA's

³We note that the standard for withholding deportation--a "clear probability" of persecution--is more stringent than the standard for analyzing eligibility for asylum--"well-founded fear" of persecution. See INS v. Cardoza-Fonseca, 480 U.S. 421, 430, 107 S.Ct. 1207, 1212, 94 L.Ed.2d 434 (1987). Because Abner fails to even meet the "well-founded fear" standard, he necessarily fails to meet the clear probability standard and does not qualify for a withholding of deportation.

determination, he must show that the evidence he presented was so compelling that no reasonable factfinder could fail to find the requisite fear of persecution." INS v. Elias-Zacarias, ___ U.S. ___, 112 S.Ct. 812, 817, 117 L.Ed.2d 38 (1992). Abner clearly fails to meet this burden.

Abner asserted that the present Nicaraguan government would kill him if he returned to Nicaragua because he was a member of the Sandinista political party. In an effort to support this conclusory assertion, Abner offered newspaper articles and a photograph from a newspaper or magazine. The newspaper articles concern clashes between certain Sandinistas and the current government of Nicaragua. Abner, however, failed completely to offer any evidence whatsoever that connects the general accounts in the newspaper articles to his individual situation. The articles do not mention Abner. Further, Abner presented no affidavits or other evidence that even begin to transform the isolated clashes between the government and some militant Sandinistas into a believable threat that the government would persecute him for his political opinions. Consequently, we hold that a reasonable trier of fact would not be compelled to find that Abner possessed a well-founded fear of persecution.

IV

For the foregoing reasons, the decision of the BIA is

A F F I R M E D.