UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-5546
Summary Calendar

LANG FONG PRITCHETT,

Petitioner,

versus

IMMIGRATION AND NATURALIZATION SERVICE,

Respondent.

Petition for Review of an Order
of the Immigration and Naturalization Service
(INS No. A26-443-195)

(July 6, 1994)

Before KING, HIGGINBOTHAM, and BARKSDALE, Circuit Judges.

PER CURIAM:[1]

Lang Fong Pritchett petitions for review of a decision of the Board of Immigration Appeals denying her motion to reconsider an order of deportation. We **DENY** the petition.

I.

Pritchett, a native and citizen of Malaysia, entered the United States in 1980 on a non-immigrant visa. ***Pritchett v. I.N.S.***, 993 F.2d 80, 81 (5th Cir.), *cert. denied*, ___ U.S. ___, 114

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[1] Local Rule 47.5.1 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 Pursuant to that rule, the court has determined that this opinion should not be published.

S. Ct. 345 (1993). In October 1983, Pritchett married Aremnie Royer, a United States citizen. ***Id***. at 82. Royer filed an immediate relative visa petition on Pritchett's behalf, and she submitted an application for adjustment of status in which she stated that she and Royer were living together as husband and wife. ***Id***.

Pritchett filed for divorce from Royer in June 1985. ***Id***. An investigation revealed that her marriage to Royer was fraudulent, and that they had never resided together as husband and wife. ***Id***. In June 1986, Pritchett was charged with violating 18 U.S.C. §§ 371 ("Conspiracy to commit offense or to defraud United States"), and 1546 ("Fraud and misuse of visas, permits, and other entry documents").[2] ***Id***. In September 1986, she pleaded guilty to violating 18 U.S.C. § 1546, by making a false statement on her application for adjustment of status. ***Id***.

On the same day that Pritchett entered her guilty plea, the INS issued an order to show cause, charging her with deportability pursuant to § 241(a)(5) of the Immigration and Nationality Act (INA), for having violated 18 U.S.C. § 1546. ***Id***. Pritchett was found deportable by the immigration judge. The BIA dismissed her appeal.

In May 1992, Pritchett filed a motion to reopen with the BIA, on the ground that an immediate relative petition had been filed

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[2] Section 1546 criminalizes, in pertinent part, "any false statement with respect to a material fact in any application, affidavit, or other document required by the immigration laws". 18 U.S.C. § 1546.

with the INS by her current husband, Roland, whom she had married in May 1987. That July, the BIA denied her motion to reopen. Our court affirmed the BIA's decision in June 1993, and the Supreme Court denied certiorari. ***Pritchett***, 993 F.2d 80 (5th Cir.), *cert. denied*, ___ U.S. ___, 114 S. Ct. 345 (1993).

On June 24, 1993, Pritchett again moved the BIA to reopen and/or reconsider, on the ground that she was no longer deportable because of a 1990 amendment to the statute under which she was found deportable. The BIA denied the motion in November 1993, holding that the amendment did not apply to Pritchett's case.

II.

Pritchett contends that the BIA abused its discretion in denying her motion for reconsideration. This contention turns on the applicability of an amendment to the statute under which she was found deportable. "The granting of a motion to reopen is ... discretionary, and the Attorney General has broad discretion to grant or deny such motions". ***Pritchett***, 993 F.2d at 83 (internal quotation marks and citations omitted). "Accordingly, we generally review the BIA's denial of a motion to reopen only for abuse of discretion". ***Id***. The applicability of the amendment to INA § 241(a)(5) is a question of law which we review *de novo*. ***Silwany-Rodriguez v. I.N.S.***, 975 F.2d 1157, 1160 (5th Cir. 1992). Our review, however, is limited, because we accord "deference to the Board's interpretation of immigration statutes unless there are compelling indications that the Board's interpretation is wrong". ***Id***.

Pritchett was found deportable under former INA § 241(a)(5), 8 U.S.C. § 1251(a)(5), which provided for the deportation of any alien who had been convicted under 18 U.S.C. § 1546. 18 U.S.C. § 1251(a)(5) (1988). Section 241(a)(5) was amended in 1990, by Section 602 of the Immigration Act of 1990, Pub. L. No. 101-649, 104 Stat. 4978 (Nov. 29, 1990), and was renumbered as § 241(a)(3)(B)(iii), and recodified as 8 U.S.C. § 1251(a)(3)(B)(iii). As amended, INA § 241(a)(3)(B)(iii) provides, in relevant part, that "Any alien who at any time has been convicted ... of a violation of, or a conspiracy to violate, section 1546 of Title 18, (relating to fraud and misuse of visas, permits, and other entry documents), is deportable". 8 U.S.C. § 1251(a)(3)(B)(iii). Pritchett acknowledges that she was deportable under INA § 241(a)(5) (pre-amendment), which was triggered by *any* violation of 18 U.S.C. § 1546. However, because her conviction under 18 U.S.C. § 1546 related to a false statement in an adjustment of status application -- which is not an entry document -- she maintains that she is no longer deportable under the amended version of the statute, INA § 241(a)(3)(B)(iii), because it applies only to convictions under 18 U.S.C. § 1546, relating to fraud and misuse of visas, permits, or other entry documents.

The BIA held that the amended version of the statute did not apply to Pritchett, relying on section 602(d) of the Immigration Act of 1990, Pub. L. No. 101-649, 104 Stat. 4978, 5082 (Nov. 29, 1990), which states that "[t]he amendments made by this section ... shall not apply to deportation proceedings for which notice has

been provided to the alien before March 1, 1991". It is undisputed that the order to show cause was served on Pritchett on September 25, 1986. The BIA also noted that our court, in affirming the BIA's previous order, had stated the same position with regard to the applicability of the amendment:

> For deportation proceedings commenced on or after March 1, 1991, the Immigration Act of 1990, Pub. L. No. 101-649, 104 Stat. 4978, revised and renumbered the deportation and admissibility provisions. The anti-fraud provisions under which Pritchett was charged now appear as INA section 241(a)(3)(B). *See* 8 U.S.C. § 1251(a)(3)(B); *compare* 8 U.S.C. § 1251(a)(5) (1988) (pre-amendment version). Because proceedings against Pritchett commenced in September 1986, the deportation aspect of her case remains governed by the earlier provisions. *See* Pub. L. No. 101-649.

Pritchett, 993 F.2d at 82 n.1 (emphasis in original); *see also* ***Rodriguez v. I.N.S.***, 9 F.3d 408, 409-10 n.3 (5th Cir. 1993) (stating, in dicta, that the 1990 amendments to former §§ 241(a)(11) and 241(a)(14) "apply only to deportation proceedings for which notice of a deportation hearing was given on or after March 1, 1991").[3]

Despite the plain language of Section 602(d) of the Immigration Act of 1990, which expressly provides that the

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[3] The INS asserts the above-quoted footnote from our court's opinion in Pritchett's prior appeal constitutes the law of the case on the issue of the applicability of the amendment. We disagree. The applicability of the amendment was not at issue in Pritchett's prior appeal; rather, the issue was whether the BIA abused its discretion in refusing to reopen the deportation proceedings on the basis of Pritchett's husband's petition for an immediate relative visa. *See* ***Pegues v. Morehouse Parish School Bd.***, 706 F.2d 735, 738 (5th Cir. 1983) (obiter dicta does not serve as the basis for application of law of the case doctrine, which operates to foreclose re-examination of decided issues).

amendments do not apply to proceedings, such as Pritchett's, in which the alien received notice before March 1, 1991, Pritchett contends that a savings clause, in Section 602(c), supports her contention that the amendments apply. That clause provides:

> Notwithstanding the amendments made by this section, any alien who was deportable because of a conviction (before the date of the enactment of this Act) of an offense referred to in paragraph (15), (16), (17), or (18) of section 241(a) of the Immigration and Nationality Act, as in effect before the date of the enactment of this Act, shall be considered to remain so deportable. Except as otherwise specifically provided in such section and subsection (d), the provisions of such section, as amended by this section, shall apply to all aliens described in subsection (a) thereof notwithstanding that (1) any such alien entered the United States before the date of the enactment of this Act, or (2) the facts, by reason of which an alien is described in such subsection, occurred before the date of the enactment of this Act.

Pub. L. No. 101-649, § 602(c), 104 Stat. 5081-82. Pritchett contends that, because the first sentence of the savings clause provides that persons found to be deportable under subsections (15), (16), (17), and (18) of the pre-amendment version of § 241(a) shall remain deportable notwithstanding the 1990 amendments, Congress must have intended that persons found to be deportable under other subsections repealed by the 1990 amendments would not be considered to remain deportable. In other words, Pritchett asserts that, because there is no savings clause relating to former § 241(a)(5) insofar as it deals with deportability for convictions under 18 U.S.C. § 1546 which do not involve fraud related to entry documents, she is no longer deportable because the 1990 amendments repealed that ground for deportability.

Pritchett's interpretation overlooks the second sentence of the savings clause. That sentence provides, in pertinent part, that the amendments shall apply *except* as otherwise specifically provided in, *inter alia*, subsection (d). As stated, that subsection provides that the amendments do not apply to proceedings in which the alien received notice before March 1, 1991. Because Pritchett received notice before then, the BIA correctly held that the amendments do not affect her deportability under former § 241(a)(5).

The BIA's interpretation of the Immigration Act of 1990 is reasonable, and it is consistent with statements in two opinions of our court, including our opinion in Pritchett's prior appeal. The BIA did not abuse its discretion in refusing to reconsider its order of deportability.

III.

For the foregoing reasons, the petition for review is

DENIED.