IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 94-40037
Summary Calendar

JATIENDREDEW GOERDIN,

Petitioner,

VERSUS

IMMIGRATION AND NATURALIZATION SERVICE,

Respondent.

Petition for Review of an Order of
the Board of Immigration Appeals
(A26 268 072)

(September 27, 1994)

Before SMITH, EMILIO M. GARZA, and PARKER, Circuit Judges.

JERRY E. SMITH, Circuit Judge:[*]

Jatiendredew Goerdin petitions for review of an order of the Board of Immigration Appeals ("BIA"), challenging the denial of his application for asylum and withholding of deportation. Goerdin also complains that the BIA's denial of his motion seeking to reopen deportation hearings, so that he might apply for suspension

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 Pursuant to that rule, the court has determined that this opinion should not be published.

of deportation, was error. Because we find the BIA's decision was in accordance with law and based upon substantial evidence, we deny review.

I.

Goerdin is a native of the South American country of Suriname and a citizen of the Netherlands. He resided in Suriname in the early 1980's when that country was ruled by a military leader, Daise Bouterse. Political conditions at that time were unsettled.

Goerdin alleges that his activities made him unpopular with the military regime. He worked as a part-time law clerk for several attorneys who allegedly opposed the Bouterse government. Some of these attorneys, Goerdin claims, were murdered. Moreover, Goerdin helped native peasants fill out applications for a government-sponsored land program. Many of these peasants were "bush negroes," an ethnic group in Suriname, some of whom actively and violently opposed the government. Goerdin alleges that this land program was unpopular with the military regime. He asserts that he had been offered several government positions, which he turned down.

Goerdin asserts these activities and associations led to death threats and harassment. Soldiers searched his house, interrogated him, and kept him under surveillance. Friends and relatives allegedly told Goerdin that he might be imprisoned or murdered. In sum, Goerdin avers that he was persecuted by the Suriname authorities, and the motivation for these actions was his political

opinions.

II.

Goerdin legally entered the United States in September 1985. By November 1986, his visa had expired, and a show cause ordered was issued. At his hearing in May 1990, he conceded deportability but applied for asylum, withholding of deportation, and voluntary departure.[1] The immigration judge ("IJ") denied the applications for asylum and withholding of deportation and granted the application for voluntary departure. The basis of the IJ's ruling was that Goerdin had failed to establish the necessary proof demonstrating a well-founded fear of persecution.

Goerdin appealed to the BIA. While the appeal was pending, the statutorily required seven-year period passed that made Goerdin eligible to apply for suspension of deportation. See 8 U.S.C. § 1254. Goerdin moved to remand so that the IJ could consider this new application.

The BIA denied all of Goerdin's claims, concluding that he had failed to show past persecution "on account of" his political opinion or other statutory ground as required by law. See 8 U.S.C. § 1101(a)(42). Moreover, the BIA took notice of the fact that, since 1991, Suriname was governed by a democratically elected president, a formal truce had been entered into between combatants, and amnesty was available. Therefore, Goerdin was not able to show

[1] The records of a previous hearing were destroyed in a fire and are not the basis for any of the findings at issue.

a well-founded fear of persecution at the time of his hearing. Finally, the BIA treated Goerdin's motion to remand as a motion to reopen and examined its substantive basis. The BIA concluded that Goerdin was not able to present a prima facie case, as the evidence did not support a showing that he would suffer "extreme hardship" if deported.

III.

The amended Immigration and Nationality Act of 1952 (the "Act") allows the Attorney General to permit a grant of asylum to aliens who demonstrate that they are "refugees." 8 U.S.C. § 1158(a). The Act in relevant part defines refugees as

> any person who is outside of such person's nationality . . ., and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion . . . .

8 U.S.C. § 1101(a)(42) (emphasis added). The mechanism by which an alien may apply for asylum is codified at 8 C.F.R. § 208 (1993).

In order to present a prima facie case for asylum, an alien must demonstrate either past persecution or that a reasonable person in his circumstance would fear persecution if deported. Guevara Flores v. INS, 786 F.2d 1242, 1249 (5th Cir. 1986), cert. denied, 480 U.S. 930 (1987); see also 8 C.F.R. § 208.13(1), (2) (establishing refugee status). The alien must also demonstrate that the fear of persecution is "on account of" one of the five enumerated factors. Zamora-Morel v. INS, 905 F.2d 833, 837 (5th

Cir. 1990). Finally, an applicant must show that "he is unable or unwilling to return to or avail himself of the protection of that country because of such fear." Adebisi v. INS, 952 F.2d 910, 912-13 (5th Cir. 1992) (quoting 8 C.F.R. § 208.13(1)).

The requirements for a prima facie claim for withholding of deportation are similar to those for an application of asylum. 8 C.F.R. § 208.16; Adebisi, 952 F.2d at 913. For a petitioner to establish withholding of deportation, however, he must demonstrate not simply past persecution or a well-founded fear of persecution but that, if deported, "it is more likely than not that he would be subject to persecution on one of the specified grounds." INS v. Stevic, 467 U.S. 407, 429-30 (1984); 8 C.F.R. § 208.16(b). This standard is "more stringent" than that required for an application for asylum. Castillo-Rodriguez v. INS, 929 F.2d 181, 185 (5th Cir. 1991). We review the determination of the BIA for denials of asylum and withholding of deportation under the substantial evidence standard and will uphold the BIA's decision if it is "supported by reasonable, substantial, and particular evidence on the record considered as a whole." INS v. Elias-Zacarios, 112 S. Ct. 812, 815 (1992).

An alien may also apply for suspension of deportation if he meets the statutory prerequisites. 8 U.S.C. § 1254. The Act requires that the alien

> has been physically present in the United States for a continuous period of not less than seven years immediately preceding the date of such application, and proves that during all such period he was and is a person of good moral character; and is a person whose deportation would, in the opinion of the Attorney General, result in

extreme hardship to the alien . . . .

8 U.S.C. § 1254(a)(1). The Attorney General and, hence, her delegatee, are vested with authority to construe the meaning of "extreme hardship" under the Act and may do so narrowly. INS v. Wang, 450 U.S. 139, 145 (1981). Some factors the BIA often considers include "age of the subject; family ties in the United States; condition of health; conditions in the country to which the alien is returnable))economic and political; financial status))business and occupation; the possibility of other means of adjustment of status; and immigration history." Hernandez-Patino v. INS, 831 F.2d 750, 754 (7th Cir. 1987).

Our review of the BIA's findings is extremely narrow. While we review the determination of "extreme hardship" for the application of suspension of deportation under the abuse of discretion standard, we have defined that standard as "a case where the hardship is uniquely extreme, at or closely approaching the outer limits of the most severe hardship . . . and so severe that any person would reasonably conclude the hardship is extreme." Hernandez-Cordero v. INS, 819 F.2d 558, 563 (5th Cir. 1987). In reviewing procedural decisionmaking, we are "limited to ascertaining whether any consideration has been given" by the BIA "to the factors establishing extreme hardship. Id. (citing Sanchez v. INS, 755 F.2d 1158, 1160 (5th Cir. 1985)).

IV.

Goerdin argues that the BIA erred by discounting his subjec-

tive fear of persecution and misreading the evidence he presented. These conclusionary arguments do not provide any grounds to overturn the BIA's decision. While the BIA accepted Goerdin's claims that he had worked as a law clerk, he had prepared applications for land grants, and the military had harassed him, it found that Goerdin had failed to show that he was persecuted for his political opinions or any other necessary statutory ground. Without a showing of this "nexus," no relief was statutorily required.

On the basis of the record before it, the BIA's findings that the Suriname government's actions in question were not based upon a statutory category were reasonable. The BIA found that Goerdin's part-time work for the attorneys was administrative, not political. Considering Goerdin's vague allegations and statements, we cannot say this finding was error.

Nor can it be said that Goerdin's filing of applications for a government program was political in the sense of being opposed to the government. Much evidence supports the conclusion that the impact of filing the applications was minor, and Goerdin's motive was commercial. Finally, Goerdin's testimony on the military's activities is interesting, but he fails to do more than speculate on the motives of the soldiers.

On our review of the record, we conclude that there was substantial evidence to find that Goerdin had failed to provide sufficient evidence he was persecuted on account of "race, religion, nationality, membership in a particular social group, or

political opinion." The BIA was justified in denying Goerdin's applications for asylum and withholding of deportation.

Goerdin also argues that the BIA erred by not considering "persecution" as a factor in deciding whether he would suffer extreme hardship if deported. He seizes upon the BIA's statement, citing Farzad v. INS, 802 F.2d 123 (5th Cir. 1986) (per curiam), that "[a] claim of persecution may not be presented as a means of demonstrating 'extreme hardship.'" Goerdin would have us read this language to mean that the BIA refused to consider Petitioner's past experiences as relevant.

To the contrary, we find that the BIA's consideration of political and economic factors subsumes Goerdin's allegations of harassment and persecution. We read Farzad to mean that the BIA need not always consider claims of persecution in analyzing claims of "extreme hardship" if it considers all the other relevant factors. See Kashefi-Zihagh v. INS, 791 F.2d 708, 710 (9th Cir. 1986) ("[The Board] may conclude that claims of political persecution have no relation to a determination of 'extreme hardship' under the [Act].").

A plain reading of the BIA's decision shows that it did consider Goerdin's past experiences but found the claims of persecution to be insufficient to meet the level of "extreme hardship" as required by the Act. Because the BIA did not abuse its discretion in disbelieving Goerdin's claim that he faces extreme hardship if deported, its denial of the motion to remand was proper.

The petition for review is DENIED.