

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-40458

Summary Calendar

EUNICE FAVOR ALFRED,
Petitioner,

v.

IMMIGRATION & NATURALIZATION SERVICE,
Respondent.

Petition for Review of an Order
of the Board of Immigration Appeals
(A26 447 512)

(December 6, 1994)
Before KING, JOLLY and DeMOSS, Circuit Judges.

PER CURIAM:*

Eunice Favor Alfred was ordered deported following her conviction of forgery under Mississippi law. Alfred appealed the Immigration Judge's deportation order to the Board of Immigration Appeals ("BIA"), which dismissed her appeal on the merits. We affirm.

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 Pursuant to that Rule, the court has determined that this opinion should not be published.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

Alfred, a native and citizen of the Philippines, entered the United States at Seattle, Washington on July 3, 1988. She subsequently married a United States citizen and was granted lawful permanent resident status.

On May 19, 1993, Alfred was convicted of forgery in violation of § 97-21-49 of the Mississippi Code¹ and sentenced to three years of confinement. Following her conviction, the Immigration and Naturalization Service ("INS") instituted deportation proceedings pursuant to 8 U.S.C. § 1251(a)(2)(A)(i), which permits deportation of any alien who

(I) is convicted of a crime involving moral turpitude committed within five years after the date of entry, and

(II) either is sentenced to confinement or is confined therefor in a prison or correctional institution for one year or longer

Id.

During Alfred's deportation proceedings, in which she appeared *pro se*, Alfred attempted to present evidence regarding

¹ Section 97-21-49 states:

Every person who shall be convicted of having sold, exchanged, or delivered, for any consideration, any forged or counterfeited promissory note, check, bill, draft, or other evidence of debt, or engagement for the payment of money, absolutely, or upon contingency, knowing the same to be forged or counterfeited, with the intent to have the same uttered or passed; or of having offered any such notes or other instruments for sale, exchange, or delivery, for any consideration, with the like knowledge and with the like intention, shall be guilty of forgery.

MISS. CODE ANN. § 97-21-49.

the circumstances surrounding her forgery conviction. The Immigration Judge ("IJ") did not permit Alfred to present such evidence, informing her that "it doesn't make any difference." Based upon unrefuted evidence of her conviction for forgery within five years of entry into the United States, the IJ ordered Alfred deported to the Philippines.

On appeal to the BIA, Alfred raised two points of error: (1) the IJ's decision was erroneous because the IJ failed to consider the circumstances surrounding her conviction for forgery in violation of the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 551-59, 701-06; and (2) the IJ erred in determining that her forgery conviction was a crime involving moral turpitude within the meaning of 8 U.S.C. § 1251(a)(2)(A)(i). Specifically, Alfred contended that the circumstances surrounding her conviction would have revealed that her actions were not morally deficient; thus, the IJ's failure to consider such extrinsic evidence resulted in a misapplication of the statute.

The BIA rejected both of these arguments on the merits. Alfred renews both of these arguments in her appeal to this court.

III. ANALYSIS

We find Alfred's contention that the IJ should have complied with the Administrative Procedure Act to be without merit. Under Marcello v. Bonds, 349 U.S. 302 (1955), the hearing procedures of an Immigration Judge are not subject to the A.P.A. See also Ho

Chong Tsao v. INS, 538 F.2d 667, 669 (5th Cir. 1976) (holding that the APA is not applicable to the BIA), cert. denied, 430 U.S. 906 (1977).

We are also unpersuaded by Alfred's second argument that her forgery conviction is not a crime involving "moral turpitude" within the meaning of 8 U.S.C. § 1251(a)(2)(A)(i) because of the circumstances in which she committed that crime.² The term "moral turpitude" is not defined in the Immigration and Nationality Act. However, we have previously held that the crime of forgery is a crime involving moral turpitude within the meaning of the Immigration and Nationality Act. United States v. Savoretti, 200 F.2d 546, 548, n.7 (5th Cir. 1952); see also Wayne R. LaFave and Austin W. Scott, Handbook on Criminal Law 32 n.56 (1972) (noting that "most theft crimes . . . [including] bad check violations . . . have been generally held to involve moral turpitude . . . "). Furthermore, we have explicitly held that the circumstances surrounding the commission of a particular crime are not relevant; it is the inherent nature of the crime itself which determines whether it is one involving moral turpitude. Okabe v. INS, 671 F.2d 863, 865 (5th Cir. 1982). Thus, the IJ's failure to consider the mitigating circumstances behind Alfred's forgery conviction was not error.

² Alfred does not contest the fact that she is guilty of forgery within the meaning of Mississippi law. Rather, she contends that the circumstances surrounding her commission of forgery indicate that her crime did not involve "moral turpitude." Specifically, Alfred contends that her husband tricked her into signing his name on several of his checks and that she did not realize that her actions were illegal.

IV. CONCLUSION

For the foregoing reasons, we AFFIRM the decision of the BIA.