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1. [Oyelowo v. INS, 1996 U.S. App. LEXIS 229](#)

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Oyelowo v. INS

United States Court of Appeals for the Eighth Circuit

December 29, 1995, Submitted ; January 8, 1996, Filed

No. 95-2305

Reporter

1996 U.S. App. LEXIS 229 *

Olumide Tunji Oyelowo, Petitioner, v. Immigration and Naturalization Service, Respondent.

Notice: [*1] RULES OF THE EIGHTH CIRCUIT COURT OF APPEALS MAY LIMIT CITATION TO UNPUBLISHED OPINIONS. PLEASE REFER TO THE RULES OF THE UNITED STATES COURT OF APPEALS FOR THIS CIRCUIT.

Subsequent History: Reported in Table Case Format at: *74 F.3d 1243, 1996 U.S. App. LEXIS 4330.*

Prior History: Petition for Review of an Order of the Immigration and Naturalization Service. District No. A29-682-398.

Core Terms

deportation, daughter, extreme hardship, suspension, Immigration, eligibility, hardship

Case Summary

Procedural Posture

Petitioner deportee sought review of the order of the Board of Immigration Appeals' (BIA), which affirmed respondent Immigration and Naturalization Service (INS)'s denial of his application for suspension of deportation.

Overview

The deportee entered the United States from Nigeria as a non-immigrant student. Subsequently, the INS issued an order requiring the deportee to show cause as to why he should not be deported for failing to maintain his status. The deportee conceded deportability, but filed an application for suspension of deportation, arguing that deportation would result in extreme hardship to his citizen daughter. The court upheld the BIA's decision.

The court found that the BIA correctly determined that the deportee's economic concerns were insufficient for purposes of suspending deportation because there was no extreme hardship where return to a native country resulted in a lower economic standard. The court also found that the BIA did not abuse its discretion in deciding that the deportee's separation from his daughter would not constitute extreme hardship for either of them where the deportee was in arrears on child support and was rarely able to see the child.

Outcome

The court affirmed the judgment of the BIA.

LexisNexis® Headnotes

Immigration Law > ... > Evidence > Burdens of Proof > General Overview

Administrative Law > Judicial Review > Standards of Review > Abuse of Discretion

Immigration Law > Deportation & Removal > Grounds for Deportation & Removal > Miscellaneous Grounds

Immigration Law > Deportation & Removal > Relief From Deportation & Removal > General Overview

Immigration Law > Deportation & Removal > Relief From Deportation & Removal > Suspension of Deportation

Immigration Law > Judicial Proceedings > Judicial Review > Scope of Review

[HN1](#) Evidence, Burdens of Proof

The appellate court reviews a denial of an application for suspension of deportation for abuse of discretion. In order to be eligible for suspension of deportation, deportee has to prove, inter alia, that deportation would cause himself or his citizen daughter extreme hardship. [8 U.S.C.S. § 1254\(a\)\(1\)](#). The Board of Immigration Appeals (BIA) may construe "extreme hardship" narrowly. A deportee's economic concerns are insufficient for purposes of suspending deportation. No extreme hardship is found where return to a native country results in lower economic standard. Mere economic hardship does not constitute extreme hardship.

Immigration Law > Deportation & Removal > Relief From Deportation & Removal > General Overview

Immigration Law > Deportation & Removal > Grounds for Deportation & Removal > Miscellaneous Grounds

[HN2](#) **Deportation & Removal, Relief From Deportation & Removal**

The Board of Immigration Appeals has the discretion to decide deportee's separation from his citizen wife and child are not extreme hardship.

Counsel: For OLUMIDE TUNJI OYELOWO, Petitioner: Herbert Azubuike Igbanugo, Minneapolis, MN.

For IMMIGRATION AND NATURALIZATION SERVICE, Respondent: Richard Soli, District Counsel, U.S. IMMIGRATION & NATURALIZATION SERVICE, Bloomington, MN. Robert L. Bombaugh, Ellen Sue Shapiro, Joseph F. Ciolino, Christopher C. Fuller, U.S. DEPARTMENT OF JUSTICE, Office of Immigration Litigation, Washington, DC.

Judges: Before WOLLMAN, MAGILL, AND HANSEN, Circuit Judges.

Opinion

PER CURIAM.

Olumide Tunji Oyelowo appeals from the Board of Immigration Appeals' (BIA) denial of his application for suspension of deportation. We affirm.

Oyelowo entered the United States from Nigeria as a non-immigrant student in April 1984. In October 1991, the Immigration and Naturalization Service (INS) issued an order requiring Oyelowo to show cause as to why he should not be deported for failing to maintain his status. Oyelowo conceded deportability, but filed an application for suspension of deportation, arguing that deportation would result in extreme hardship to his citizen daughter.

The immigration judge (IJ) denied Oyelowo's application, concluding that Oyelowo met the continuous physical presence and good moral character requirements for suspension, but deciding that Oyelowo failed to show his deportation would be an extreme hardship for either him or his [*2] daughter. The IJ noted that Oyelowo's concerns about returning to Nigeria were economic in nature and therefore would not amount to eligibility for suspension absent some other factor. As for Oyelowo's daughter, the IJ determined that Oyelowo had a nominal relationship with his daughter; he was in arrears on child support, and was rarely able to see the child.

The BIA dismissed Oyelowo's appeal of the IJ's decision.

[HN1](#)  We review a denial of an application for suspension of deportation for abuse of discretion. [Barragan-Verduzco v. INS, 777 F.2d 424, 425-26 \(8th Cir. 1985\)](#). In order to be eligible for suspension of deportation, Oyelowo had to prove, inter alia, that deportation would cause himself or his citizen daughter extreme hardship. See [8 U.S.C. § 1254\(a\)\(1\)](#). The BIA may construe "extreme hardship" narrowly. [Miranda v. INS, 51 F.3d 767, 769-70 \(8th Cir. 1995\)](#). We find the BIA correctly determined that Oyelowo's economic concerns were insufficient for purposes of suspending deportation. See [Perwolf v. INS, 783 F.2d 112, 113-14 \(8th Cir. 1985\)](#) (no extreme hardship where return to native country results in lower economic standard); [Carrete-Michel v. INS, 749 \[*3\] F.2d 490, 493 \(8th Cir. 1984\)](#) (mere economic hardship does not constitute extreme hardship).

As for Oyelowo's hardship contention concerning his daughter, we find the BIA did not abuse its discretion in deciding that Oyelowo's separation from his daughter would not constitute extreme hardship for either of them. See [Salas-Velazquez v. INS, 34 F.3d 705, 709 \(8th Cir. 1994\)](#) [HN2](#)  (BIA had discretion to decide deportee's separation from citizen wife and child not extreme hardship). The BIA's determination that Oyelowo was not close to his daughter was supported by Oyelowo's

extended absence from his daughter's life and his consistent failure to pay his child support obligations. Accordingly, the judgment is affirmed.

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