

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 00-60905

JOSE ROBERTO PALACIOS-CASTRO,

Petitioner,

versus

JOHN ASHCROFT,
U.S. ATTORNEY GENERAL,

Respondent.

Petition for Review of an Order of the
Board of Immigration Appeals
BIA No. A91-021-104

March 7, 2002

Before REAVLEY, WIENER, and PARKER, Circuit Judges.

PER CURIAM:*

Jose Roberto Palacios-Castro petitions for review of an order of the Board of Immigration Appeals (BIA) holding that Palacios-Castro's state conviction for felony driving while intoxicated was an aggravated felony warranting his removal from this country. The respondent has moved to dismiss the petition for review and to remand the case to the BIA for reconsideration in light of United States v. Chapa-Garza, 243 F.3d 921, 927 (5th Cir. 2001). Palacios-Castro has replied to the respondent's motion to remand. He contends that his petition should be

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

dismissed without prejudice because it is unclear whether INS v. St. Cyr, 121 S. Ct. 2271 (2001), deprives this court of jurisdiction over the petition. Palacios-Castro does not oppose the respondent's motion to the extent that it seeks remand to the BIA. Contrary to Palacios-Castro's assertion, St. Cyr does not deprive this court of jurisdiction over his petition for review, as it is materially distinguishable from the instant case. See 121 S. Ct. at 2275, 2286-87.

Palacios-Castro's petition for review is GRANTED. The order of the BIA is VACATED, and this case is REMANDED to the BIA for disposition consistent with Chapa-Garza, 243 F.3d at 927. All other outstanding motions are DENIED.