

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

September 30, 2008

Charles R. Fulbruge III
Clerk

No. 05-60690
Summary Calendar

JORGE ALBERTO MELGAR

Petitioner

v.

MICHAEL B MUKASEY, U S ATTORNEY GENERAL

Respondent

Petition for Review of an Order of the
Board of Immigration Appeals
BIA No. A28 582 864

Before DAVIS, GARZA, and PRADO, Circuit Judges.

PER CURIAM:*

Jorge Alberto Melgar appeals a Board of Immigration Appeals (BIA) decision finding him ineligible to apply for relief under former § 212(c) of the Immigration and Nationality Act (INA), former 8 U.S.C. § 1182(c). Melgar conceded that his conviction for indecency with a child rendered him deportable on two grounds, for his having committed a crime involving moral turpitude and for his having committed an aggravated felony. See 8 U.S.C. § 1227(a)(2)(A)(i), (iii).

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Melgar's challenges to the BIA's determination are foreclosed by our decisions in *Vo v. Gonzales*, 482 F.3d 363, 367-68 (5th Cir. 2007), and *Avilez-Granados v. Gonzales*, 481 F.3d 869, 872 (5th Cir. 2007). His petition for review is thus DENIED in part. The BIA had authority to issue an order of removal; however, Melgar should be granted an opportunity to apply for an adjustment of status before the Immigration Judge, as he reasonably relied on the Immigration Judge's grant of §212(c) relief. See *Avilez-Granados*, 481 F.3d at 872-73. The petition is thus GRANTED in part and the case is REMANDED for further proceedings.