

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

November 8, 2007

Charles R. Fulbruge III
Clerk

No. 06-60843
Summary Calendar

EMILIO RODRIGUEZ-HERNANDEZ

Petitioner

v.

PETER D KEISLER, ACTING US ATTORNEY GENERAL

Respondent

Petition for Review of an Order of the
Board of Immigration Appeals
BIA No. A90 373 219

Before HIGGINBOTHAM, STEWART, and OWEN, Circuit Judges.

PER CURIAM:*

Emilio Rodriguez-Hernandez petitions this court for review of an order from the Board of Immigration Appeals (BIA) that affirmed the Immigration Judge's decision granting the respondent's motion to pretermitt Rodriguez-Hernandez's request for a waiver of removal pursuant to former 8 U.S.C. § 1182(c) and ordering Rodriguez-Hernandez removed from the United States. Rodriguez-Hernandez contends that the BIA erred by determining that

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

he was ineligible for relief pursuant to § 1182(c). The respondent moves for summary affirmance or, in the alternative, an extension of time to file a brief.

Rodriguez-Hernandez has not shown error in connection with the BIA's determination that he had failed to establish his status as a lawful permanent resident of the United States. See *INS v. Phinpathya*, 464 U.S. 183, 188 n.6 (1984). He has concomitantly failed to carry his burden of showing that he is eligible for relief under former § 1182(c). See *Vo v. Gonzales*, 482 F.3d 363, 366-70 (5th Cir. 2007); see also *Ashby v. INS*, 961 F.2d 555, 557 (5th Cir. 1992). Rodriguez-Hernandez's petition for review is DENIED. The respondent's motion is likewise DENIED.