IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 92-4384
Summary Calendar

JOHN CHIKE,

Petitioner,

VERSUS

IMMIGRATION AND NATURALIZATION SERVICE,

Respondent.

Petition for Review of an Order of
the Board of Immigration Appeals
(A70 439 992)

(November 18, 1992)

Before HIGGINBOTHAM, SMITH, and DeMOSS, Circuit Judges.

JERRY E. SMITH, Circuit Judge:[*]

John Chike, an alien, seeks review of an order of deportation issued by the Board of Immigration Appeals ("BIA"). Finding the petition wholly without merit, we deny the petition and affirm the decision of the BIA.

I.

Respondent, the Immigration and Naturalization Service

[*] Local Rule 47.5.1 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 Pursuant to that rule, the court has determined that this opinion should not be published.

("INS"), charged Chike with deportability pursuant to section 241(a)(11) of the Immigration and Nationality Act of 1952, as amended, 8 U.S.C. § 1251(a)(11), as an alien convicted of a controlled substance violation. An immigration judge ("IJ") found Chike deportable under that section.

Chike appealed to the BIA, which upheld the decision of the IJ. We reversed and remanded because Chike had not been given notice of the BIA's briefing schedule and hence was deprived of due process of law. Chike v. INS, 948 F.2d 961 (5th Cir. 1991). On remand, the BIA once again has upheld the IJ.

II.

In September 1990, Chike was convicted, pursuant to a plea of "no contest," or nolo contendere, of possession of cocaine "weighing less than 28 grams by aggregate weight." He was fined and given four years' probation.

At his deportation hearing, the IJ gave Chike a list of local immigration attorneys and granted several continuances to allow him to obtain a lawyer; he did not do so. At his show cause hearing, Chike admitted the allegations in the show cause order, including the fact of his conviction.

III.

The BIA found that in light of his conviction, Chike's deportability had been established by clear, unequivocal, and convincing evidence. See § 1251(a)(11). This finding is

conclusive on this court if supported by "reasonable, substantial, and probative evidence on the record considered as a whole." 8 U.S.C. § 1105a(a)(4). See Paointhara v. INS, 708 F.2d 472, 474 (9th Cir. 1983) (per curiam).

IV.

Chike's main argument on appeal is that a conviction based upon a plea of nolo contendere cannot constitute the basis for deportation. We have soundly rejected that assertion, however. See Yazdchi v. INS, 878 F.2d 166, 167 (5th Cir.), cert. denied, 493 U.S. 978 (1989); Qureshi v. INS, 519 F.2d 1174, 1175-76 (5th Cir. 1975). Thus, the BIA properly noted that "it was not the plea but the conviction which lawfully establishes petitioner's deportability."

V.

Chike claims that he was denied the right to a fair hearing. Mainly, he argues that the IJ unfairly led him to answer questions that were used against him in finding deportability and by barring him from seeking relief until he first had addressed the issue of deportability. He also asserts denial of the right to counsel.

Chike is precluded from raising these procedural issues, however, as he did not mention them during the administrative proceedings. See LeTourneur v. INS, 538 F.2d 1368, 1370 (9th Cir. 1976), cert. denied, 429 U.S. 1044 (1977). These, like all

contentions of error, must be raised before the BIA in order to preserve them for judicial review. Otherwise, the petitioner has failed to exhaust his administrative remedies, and we may decline to consider the issue. See Vargas v. INS, 826 F.2d 1394, 1399 (5th Cir. 1987) (per curiam) (on petition for rehearing); Carnejo-Molina v. INS, 649 F.2d 1145, 1150-51 (5th Cir. Unit A July 1981). As Chike raised none of his asserted due process issues before the BIA, in his brief or otherwise, he has not preserved them for appeal.

Even if, arguendo, we were to consider these issues, Chike would have to show substantial prejudice. See Ka Fung Chan v. INS, 634 F.2d 248, 258 (5th Cir. Jan. 1981); Farrokhi v. INS, 900 F.2d 697, 702 (4th Cir. 1990). In this regard, Chike's claim that it was improper for the IJ to bar him from seeking relief until the issue of deportability had been addressed is without merit, as deportability was the primary)) indeed, the only)) issue to be determined. The record also does not reflect that the IJ asked Chike any improper questions but only sought to determine whether he was deportable. The fact that his answers may not have helped him is no ground for complaint.

Chike also has no valid claim that he was improperly deprived of the right to counsel. There is no right to appointed counsel in deportation proceedings. Paul v. INS, 521 F.2d 194, 197-98 (5th Cir. 1975). As here, the alien is provided with the opportunity to retain a lawyer, and, also as here, if he fails to do so the hearing may proceed. See Villanueva-Jurado v. INS, 482

F.2d 886, 888 (5th Cir. 1973); Ramirez v. INS, 550 F.2d 560, 565 (9th Cir. 1977). The record reflects that Chike was given a list of immigration attorneys and had ample opportunity to retain one. Moreover, given the fact of his conviction, there is no reason to think that the presence of counsel would have made a difference in the deportation proceedings.

Finally, Chike appears to raise questions regarding the validity of his conviction. We long have held, however, that "[i]mmigration authorities must look solely to the judicial record of final conviction and may not make their own independent assessment of the validity of [the petitioner's] guilty plea." Zinnanti v. INS, 651 F.2d 420, 421 (5th Cir. Unit A July 1981) (per curiam).

In summary, Chike's attack on the order of deportation is to no avail. The petition for review is DISMISSED, and the decision of the BIA is AFFIRMED.