

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 92-4443  
Summary Calendar

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DIMITRIOS IOANNIS KADAS,

Petitioner,

versus

IMMIGRATION AND NATURALIZATION SERVICE,

Respondent.

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Petition for Review of an Order of the Board of  
Immigration Appeals  
(A36-385-465)

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(February 26, 1993)

Before JOLLY, DUHÉ, and BARKSDALE, Circuit Judges.

PER CURIAM:\*

I

Kadas is a thirty year old citizen of Greece who was admitted to the United States as a lawful permanent resident on July 28, 1982. Kadas was convicted on May 13, 1987, for fraud-unauthorized use of an access device in violation of 18 U.S.C. § 1029(a)(2). Kadas was subsequently convicted on May 31, 1990, for debit card

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\*Local Rule 47.5 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 Pursuant to that Rule, the court has determined that this opinion should not be published.

abuse. Based on these convictions, the Immigration and Naturalization Service (INS) instituted deportation proceedings against Kadas by the issuance of an Order to Show Cause (OSC).

At his initial deportation hearing on January 14, 1992, Kadas admitted that he had been convicted of fraud-unauthorized use of an access devices. He also admitted that he had been convicted of debit card abuse. The immigration judge found that Kadas's deportability was established under sections 241(a)(2)(A)(i),(ii) of the Act. Kadas then applied for a waiver of deportation under section 212(c) of the Act, but on February 5, 1992, the immigration judge denied Kadas's request. Kadas then appealed to the Board of Immigration Appeals, which affirmed the immigration judge's decision on April 9, 1992. Kadas now petitions this court for a review of the order of the Board.<sup>1</sup> We grant review and affirm.

## II

Kadas challenges the Board's finding of deportability on three bases. First, Kadas claims that the offense of which he was convicted on May 13, 1987 does not constitute a deportable offense because he was sentenced to three years confinement, with only the first six months to be served and the remainder suspended. Kadas argues that it is required under section 241(a)(2)(A)(i) of the Act that he be confined in a prison or correctional institution for one year or more, which he alleges he was not. The INS argues that

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<sup>1</sup>Kadas's motion to proceed in forma pauperis was granted on July 7, 1992.

Kadas did not raise this issue before the Board, and therefore Kadas has not exhausted his administrative remedies and this court does not have jurisdiction to review this issue. In the alternative, the INS argues that Kadas was sentenced to three years confinement and is, therefore, deportable under section 241(a)(2)(A)(i).

Second, Kadas argues that he was found not deportable by an immigration judge in Houston, Texas, on or about June 15, 1987. The INS argues that Kadas submitted no evidence or documentation of this alleged prior deportation hearing and there is no support for his assertion. Accordingly, the INS argues that there is no basis for reversing the decision of the Board.

Third, Kadas argues that he has never been convicted of the offense of credit card abuse, as alleged by the government in its OSC. The INS argues that Kadas admitted the government's allegation after noting that he was convicted of debit card abuse instead of credit card abuse; furthermore, Kadas specifically indicated that he did not claim that the change from credit card abuse to debit card abuse created any right to relief on his part.

### III

#### A

The Board's denial of a petition for relief from deportation is reviewed for abuse of discretion. Villarreal-San Miguel v. INS, 975 F.2d 248, 250 (5th Cir. 1992). Findings of fact supporting the Board's exercise of discretion, however, are reviewed merely to

determine whether they are supported by substantial evidence. Diaz-Resendez v. INS, 960 F.2d 493, 495 (5th Cir. 1992). The denial of an applicant's petition for relief under section 212(c) will be upheld unless it is arbitrary, irrational, or contrary to law. Id. "When determining whether the Board's action was arbitrary, irrational, or not in accordance with the law, we `engage in a substantial inquiry,...a thorough, probing, in-depth review of [the] discretionary agency action.'" Id., quoting Citizens to Preserve Overton Park, Inc. v. Volpe, 401 U.S. 402, 416 (1971).

B

Kadas first argues that the offense for which he was convicted on May 13, 1987, does not constitute a deportable offense because his sentence of three years with the suspension of the incarceration in excess of six months does not meet the requirements of section 242(a)(2)(A)(i). Kadas did not, however, raise this issue in his appeal to the Board. "This failure to exhaust [his] administrative remedies precludes our considering this issue on appeal." Campos-Guardado v. INS, 809 F.2d 285, 291 (5th Cir. 1987).

C

Kadas next argues that the Board could not find him deportable because an earlier ruling on or about June 15, 1987, had determined that he was not deportable based on the May 13, 1987 conviction. Kadas has failed, however, to present any evidence or documentation

of this alleged previous deportation hearing. As the INS points out, even if a hearing were conducted in June of 1987, it could not have concerned the second offense by Kadas, for which he was convicted on May 31, 1990. The Board found this argument by Kadas to be unfounded. In the absence of any evidence of this alleged 1987 hearing, we agree.

D

Third, Kadas argues that he was not convicted of credit card abuse, which was alleged in the OSC. Kadas was, however, convicted of debit card abuse. In Kadas's hearing before the immigration judge on February 5, 1992, the government acknowledged that Kadas's OSC contained an apparent clerical error and charged him with a conviction for credit card abuse, but that it should have been for debit card abuse. The government stated that this error did not, however, create a major barrier. Kadas acknowledged his conviction for debit card abuse and indicated that he did not claim that the mistake created any right to relief on his part.

Kadas does not argue that he was not convicted of debit card abuse. The Board found that the OSC sufficiently apprised Kadas of the charge of deportability and, furthermore, that the crime of debit card abuse was a crime of moral turpitude. Accordingly, Kadas was deportable as charged based on his conviction for debit card abuse. We conclude that the Board did not err in its findings.

V

For the foregoing reasons, the deportation of Dimitrios  
Ioannis Kadas is

A F F I R M E D.