UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 92-4574
Summary Calendar

HECTOR ESPARZA-ALVAREZ,

Petitioner,

versus

IMMIGRATION AND NATURALIZATION SERVICE,

Respondent.

On Petition for Review of an Order of
the Board of Immigration Appeals

(A35 512 558)

(December 30, 1992)

Before POLITZ, Chief Judge, HIGGINBOTHAM and WIENER, Circuit Judges.

PER CURIAM:*

Claiming denial of due process, Hector Esparza-Alvarez petitions for review of an order of the Board of Immigration Appeals which declined to reopen his deportation proceeding and dismissed his appeal. Finding no error, we affirm.

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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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Admitted to the United States as a lawful permanent resident in 1978, Esparza was convicted in 1990 of burglary of a habitation with intent to commit theft and forgery. He conceded deportability under section 241(a)(2)(A)(ii) of the Immigration and Nationality Act.[1] At his August 9, 1991 deportation hearing, Esparza, through counsel, informed the immigration judge that he wished to apply for discretionary relief under section 212(c) of the Act.[2] The immigration judge set January 6, 1992 as the deadline for the filing of his waiver application.

On January 6, 1992, Esparza's attorney filed a Form I-191 waiver application together with a letter stating that Esparza was unable to pay the application fee. Three days later the waiver application was returned with a letter explaining that the request for a fee waiver did not comply with the requirements of 8 C.F.R. § 3.23 and granting until January 20, 1992 for resubmission of the Form I-191 together with a legally sufficient request for waiver of fees. Neither document was submitted. On January 23, 1992 the immigration judge entered an order of deportation. Esparza was unable to pay his first lawyer's fees and on February 4, 1992 he requested an extension to obtain counsel. On February 28, 1992 his wife wrote to explain that her husband was unable to pay the application fee because he had broken his arm and to reurge his request for relief from deportation. The BIA treated the letter as a motion to reopen and denied it and dismissed the appeal. This

[1]8 U.S.C. § 1251(a)(2)(A)(ii).

[2]8 U.S.C. § 1182(c).

petition for review timely followed.

Esparza maintains that denial of his application for relief from deportation without a hearing violates due process. The record belies this assertion. Esparza was afforded an opportunity for a hearing. He had only to file the proper application documents in a timely fashion. When he failed to do so after five-months' lead time, he was given an extension. Relief was denied only after he missed the second deadline without a reasonable explanation. This amply qualifies as a constitutionally adequate opportunity for hearing.[3] One "cannot ignore the process duly extended to him and later complain that he was not accorded due process."[4]

The petition for review is DENIED.

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[3] Cf. **Patel v. United States I.N.S.**, 803 F.2d 804 (5th Cir. 1986) (affirming validity of in absentia hearing where petitioner was afforded reasonable opportunity to be present and failed to demonstrate reasonable cause for his absence); see also **Reyes-Arias v. I.N.S.**, 866 F.2d 500, 503 (D.C.Cir. 1989) ("[T]he BIA, like other agencies in the modern administrative state, has a keen interest in securing the orderly disposition of the numerous claims which enter the vast apparatus of the INS.").

[4] **Galloway v. State of Louisiana**, 817 F.2d 1154, 1158 (5th Cir. 1987).