

UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 92-4833  
Summary Calendar

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FRANCISCO RODARTE-QUINTANA,

Petitioner,

versus

IMMIGRATION AND NATURALIZATION SERVICE,

Respondent.

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Petition for Review of an Order of the  
Board of Immigration Appeals  
A14 545 555

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April 26, 1993

Before GARWOOD, JONES, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:\*

The appellant, a Mexican national who has resided in this country since 1966, challenges the decision of the Board of Immigration Appeals affirming an order of deportation against him. We find no error in the challenges he asserts against deportation, and we therefore 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

In 1984, appellant was served with an order to show cause charging him with deportability for having violated domestic laws regarding controlled substances and committed two crimes involving moral turpitude not arising out of a single scheme of criminal misconduct. 8 U.S.C. § 1251(a)(11), § 1251(a)(4). Over the next two years, appellant obtained several continuances through several attorneys until the patience of the immigration judge appears to have been exhausted. On July 11, 1986, while appellant was incarcerated on a criminal charge but represented by counsel, the immigration judge denied his request for another continuance and heard his case in absentia. The immigration judge accepted his application for suspension of deportation, 8 U.S.C. § 1254(b), his application for waiver of deportation, 8 U.S.C. § 1182(c) and his request for voluntary departure, 8 U.S.C. § 1254(e). While noting that the charges in the order to show cause were sloppily drafted,<sup>1</sup> the immigration judge found appellant deportable based on proof that between 1977 and 1982, he had been convicted for unlawful possession of heroin, a felony, for which he was sentenced to nine years in jail; felony burglary of a habitation, for which he was sentenced to five years in jail; and enhanced felony theft, for which he was sentenced to eight years in jail. On more than one occasion, petitioner had violated his probation and was incarcerated for that reason. The immigration judge proceeded in

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<sup>1</sup> The order to show cause cited the controlling statutory bases for deportation, although it got some of the facts wrong. Petitioner conceded the existence of convictions leading to deportability, so appellant cannot assert a lack of fundamental fairness in this respect.

absentia because he found that even if appellant were statutorily eligible for any of the relief he was seeking, relief would have been denied in the exercise of discretion because of petitioner's "unsavory record to date."

Appellant timely appealed this decision to the Board asserting three brief points of error:

I. It was error to compel the respondent to proceed in absentia with his deportation hearing and applications for relief while he was incarcerated in connection with violations of his parole conditions; thereby making it impossible for a proper set of applications to be prepared, and precluding important testimony (as well as other evidence) concerning respondent's reserve training duty (which was crucial to whether or not he could apply for suspension of deportation).

II. It was error to deny respondent's application for relief under § 212(c).

III. It was error to deny suspension of deportation.

Appellant filed no brief. Six years later, on July 17, 1992, the Board summarily dismissed the appeal because appellant failed "to articulate why the actions of the immigration judge were in error, cites no legal or factual support for his case, and otherwise fails to identify any meaningful basis for review of the decision." The Board noted that appellant neither filed a promised brief nor requested oral argument.

The Board's decision to dismiss an appeal is reviewed by this court for abuse of discretion. Medrano-Villatoro v. INS, 866 F.2d 132, 134 (5th Cir. 1989). In this case, unlike Medrano, appellant did not adequately apprise the Board of the grounds of

his appeal as required by 8 CFR § 3.1(d)(1-a). That regulation permits the Board summarily to dismiss an appeal if "the party concerned fails to specify the reasons for his appeal on Form I-290A (Notice of Appeal)." As we held in Medrano, "the reasons for the appeal must inform the Board what was wrong about the immigration judge's decision and why . . . The statement must specify whether the petitioner challenges erroneous findings of fact or law, or both (citations omitted)." 866 F.2d 133-34. This court has also held that supporting authority for a legal position must be cited to the Board, but if the dispute is on the facts, the particular details at issue must be identified. Townsend v. INS, 799 F.2d 179, 182 (5th Cir. 1986). Further, a petitioner must indicate whether he is challenging a finding of statutory ineligibility or the exercise of discretion in regard to a denial of discretionary relief. Id. Simply to allege error in the decision of the Board is insufficient. Townsend at 182.

The three points stated by appellant in his notice of appeal plainly fail to comply with these requirements. Further, appellant neither filed a brief nor requested oral argument in order to flesh out the nature of his challenges to the deportation order when he had his chance at the Board. In this court, he has filed no reply brief, and his main brief fails to deal with his lack of compliance with these rules. Such rules of specificity serve the essential purpose of informing the Board exactly of the nature of a petitioner's complaints, so that it can render an informed decision. Appellant's defaults are similar in effect to

a failure to exhaust administrative remedies; were we to reach the merits in such a case, we would have effectively eliminated one tier of administrative review. Townsend, at 182.

Apparently to deflect the impact of non-compliance with the Board's briefing rule, the appellant contends that the Board was unjustified in entering a summary dismissal after his appeal had been on file there for six years. This cannot have been a due process violation, for it is impossible to see how this delay hurt appellant. Not only did he remain in this country much longer than he otherwise would have done, but the delay provided even greater opportunities to attempt to cure the briefing deficiencies or submit new information to the Board. While this lengthy delay does no credit to the Board's reputation for efficiency, the delay certainly did not hurt appellant, and he does not assert that it did. The Board's delay does not excuse appellant's failure to comply with its briefing rule, and it was accordingly not an abuse of discretion for the Board to dismiss the appeal summarily when it finally decided to render its opinion.

Because we affirm the Board's summary dismissal of appellant's appeal of the immigration judge's order, we decline to reach the contentions he has raised on the merits. If we did, we would find them frivolous.

The order of deportation is AFFIRMED, and the petition for review of the Board's order is DISMISSED. The stay of deportation is VACATED.