UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-4850
Summary Calendar

ANGEL SANCHEZ-RODRIGUEZ,

Petitioner,

VERSUS

IMMIGRATION AND NATURALIZATION SERVICE,

Respondent.

Petition for Review of an Order of the
Board of Immigration Appeals
(INS #A41-323-144)

(February 24, 1993)

Before JOLLY, DUHÉ, and BARKSDALE, Circuit Judges.

PER CURIAM:[1]

Angel Sanchez-Rodriguez petitions for review of the order of the Board of Immigration Appeals (Board) upholding a finding of deportability under § 241(a)(2) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1251(a)(2). We **DISMISS** the petition.

I.

Sanchez, a native and citizen of Mexico, entered the United States as a lawful permanent resident in March 1987. That December, he was apprehended entering the United States illegally

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[1] 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 Pursuant to that rule, the court has determined that this opinion should not be published.

(at a point other than one designated for entry), after an excursion into Mexico. He pleaded guilty to, and was convicted of, knowingly and willfully entering the United States at a place not designated for entry and without being inspected, in violation of § 275 of the INA, 8 U.S.C. § 1325. Shortly thereafter, the INS initiated deportation proceedings against him, pursuant to § 241(a) of the INA, 8 U.S.C. § 1251(a)(2); and, in October 1988, an immigration judge found him deportable under that section. Sanchez was granted voluntary departure. The immigration judge also certified to the Board the issue presented by this petition, discussed below. The Board upheld the finding in July 1992. Sanchez was again granted voluntary departure.

II.

Sanchez contends, as he did to the immigration judge and Board, that, under the ***Fleuti*** doctrine, he should have been allowed to present evidence that his December 1987 entry was not one for purposes of deportability under § 241(a), because his departure into Mexico was brief, casual, and innocent.[2] The Board rejected the relevance of the ***Fleuti*** doctrine to Sanchez's deportation proceedings, holding that his conviction for illegal entry under § 275 foreclosed the question of entry for purposes of § 241(a).

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[2] In ***Rosenberg v. Fleuti***, 374 U.S. 449, (1963), the Supreme Court interpreted 8 U.S.C. § 1101(a)(13), which defines and creates an exception to the term "entry" for purposes of the immigration laws. The Court held that "an innocent, casual, and brief excursion by a resident alien outside this country's borders may not have been `intended' as a departure disruptive of his resident alien status and therefore may not subject him to the consequences of an `entry' into the country on his return". ***Id.*** at 462.

Whether Sanchez's conviction for illegal entry disposes of any ***Fleuti*** issue is a question of law, which we freely review. ***Silwany-Rodriguez v. INS***, 975 F.2d 1157, 1160 (5th Cir. 1992).[3]

In ***Matter of Rina***, 15 I&N Dec. 346 (BIA 1975), the Board considered whether an alien, like Sanchez, who has been convicted of illegal entry under § 275 may invoke the ***Fleuti*** doctrine in subsequent deportation proceedings. It reasoned that, because the definition of "entry" under 8 U.S.C. § 1101(a)(13) (upon which the ***Fleuti*** doctrine is based) applies to both § 275 and § 241(a), *see* ***Matter of Barragan-Garibay***, 15 I&N Dec. 77 (BIA 1974), a conviction for an illegal entry under § 275 is "dispositive of any ***Fleuti*** issue" in a deportation proceeding under § 241(a). ***Rina***, 15 I&N Dec. 346, In other words, an entry under § 275 is the same as one under § 241(a); therefore, a conviction under § 275 collaterally estops the alien from invoking the ***Fleuti*** doctrine in deportation proceedings under § 241(a). ***Id.***; *see also* ***Howard v. INS***, 930 F.2d 432 (5th Cir. 1991) (holding that criminal conviction establishing alienage triggers collateral estoppel regarding alienage issue in administrative deportation proceedings).

We find no error in the Board's reasoning in ***Rina***, nor on its reliance on ***Rina*** in the present case. Having pleaded guilty to

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[3] Of course, we accord deference to the Board's interpretation of the statutes it administers. ***Silwany-Rodriguez***, 975 F.2d at 1160; ***Chevron U.S.A. v. Natural Res. Def. Council***, 467 U.S. 837, 843 (1984). Because, as discussed *infra*, we find no error in the Board's determination, the scope of review does not come into play.

illegal entry, Sanchez cannot now attempt to disprove it.[4]

III.

For the foregoing reasons, the petition is

DISMISSED.[5]

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[4] Sanchez's contention that the ***Fleuti*** doctrine was unavailable as a defense in his criminal prosecution under § 325 lacks merit. As explained above, the definition of entry contained in 8 U.S.C. § 1101(a)(13), upon which the ***Fleuti*** doctrine is based, applies to the criminal provisions of § 275; Sanchez simply failed to utilize the defense.

[5] Sanchez alternatively requests this court to reinstate the 30-day period granted him by the Board for voluntary departure. The Board noted that the time could be extended by the district director, and the INS does not respond to this request. This court has not decided whether we have the authority to grant voluntary departure relief. ***Farzad v. INS***, 808 F.2d 1071, 1072 (5th Cir. 1987). However, as in ***Farzad***, we find "no legal or equitable persuasion for this court to augment the administrative remedy already available to [Sanchez] of applying to the district director to grant an extension of voluntary departure". ***Id.*** Assuming that that procedure is even available, considering that Sanchez waited until the 30-day period had expired before filing this petition, we intimate no view on the appropriate outcome of such an application.