IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 92-4893
Summary Calendar

DANIEL HODULIK,

Petitioner,

versus

IMMIGRATION AND NATURALIZATION SERVICE,

Respondent.

Petition for Review of an Order of the
Immigration and Naturalization Service
A22 585 601

(May 12, 1993)

Before JOLLY, DUHÉ, and BARKSDALE, Circuit Judges.

E. GRADY JOLLY, Circuit Judge:[*]

In this case, we review the Board of Immigration Appeals' decision to dismiss Daniel James Hodulik's appeal of an immigration judge's decision that he is deportable. The United States has already deported Hodulik once. Since re-entering the United States, Hodulik has been convicted of several automobile thefts. Hodulik appeals the Board's decision and petitions us for a court-

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

appointed attorney. Because Hodulik is not entitled to an attorney on appeal, we deny his motion. Holding that neither the immigration judge nor the Board committed reversible error, we affirm.

I

The petitioner, James John Hodulik, is a twenty-five year old citizen of Canada. Hodulik was born in Canada. After his mother died, however, relatives took him to the United States to live with his aunt. While in the United States, Mr. and Mrs. Hodulik adopted him.

On April 10, 1987, Hodulik was convicted in Superior Court, Alamance County, North Carolina, of felony larceny for stealing a Buick Regal automobile. Although Hodulik was sentenced to four years incarceration for this offense, the judgment stated that Hodulik would serve his sentence as a "committed youthful offender."

The United States deported Hodulik on July 12, 1988. In the Summer of 1989, Hodulik re-entered the United States at Niagara Falls, New York, without obtaining the permission of the Attorney General. Since re-entering the United States, Hodulik has twice been convicted of misdemeanor larceny and once of felony larceny. All three convictions involve separate thefts of different automobiles.

II

The United States began deportation proceedings against Hodulik on November 29, 1991. The United States charged that Hodulik is deportable for the following three reasons 1) Hodulik was excludable at the time he re-entered the United States in the Summer of 1989 because he had already been convicted of a crime involving moral turpitude, 2) Hodulik was excludable at the time he re-entered the United States in the Summer of 1989 because Hodulik failed to obtain permission from the Attorney General to re-enter the United States, 3) Hodulik had been convicted of at least two crimes involving moral turpitude since re-entering the United States.

The United States commenced Hodulik's deportation hearing on March 4, 1992. The immigration judge continued the hearing to give Hodulik an opportunity to consult with an attorney. On April 29, 1992, the United States reconvened the hearing with Hodulik and his attorney present. At the hearing, Hodulik admitted that he re-entered the United States without the Attorney General's permission. Hodulik also admitted that he had been convicted of larceny several times, but he argued that larceny is not a crime involving moral turpitude and that the court should ignore the first conviction because he committed that crime as a minor. Hodulik also contended that he is a United States citizen because he was adopted by Mr. and Mrs. Hodulik when he lived in the United States as a child.

Rejecting Hodulik's arguments, the immigration judge found that Hodulik was deportable as charged. Because Hodulik failed to present evidence that after being adopted he either became a lawful permanent resident or became a United States citizen, the immigration judge found that Hodulik was not a United States citizen. The immigration judge also noted that Hodulik had not applied for relief from deportation.

Hodulik appealed the immigration judge's decision to the Board of Immigration Appeals. The Board dismissed Hodulik's appeal because it lacked an arguable basis in law or fact. Hodulik now appeals the Board's decision. He also petitions us for a court appointed attorney. We note that the government provided Hodulik with an attorney below and that he is not entitled to an attorney on appeal. See Perez-Perez v. Immigration and Naturalization Service, 781 F.2d 1477, 1180-1181 (11th Cir. 1986) (finding that the language of the Criminal Justice Act indicates that Congress did not intend for the Court to provide counsel to aliens in civil judicial proceedings challenging their immigration status); Paul v. Immigration and Naturalization Service, 521 F.2d 194, 198 (5th Cir. 1975). Accordingly, we deny Hodulik's motion for a court appointed attorney.

III

Department of Justice regulations allow the Board to dismiss summarily an appeal in which the appellant fails adequately to specify the reasons for his appeal. 8 C.F.R. § 3.1(d)(1-a)(i).

Under these regulations, an appellant must inform the Board how the immigration judge erred. Medrano-Villatoro v. Immigration and Naturalization Service, 866 F.2d 131 (5th Cir. 1989). If the appellant challenges the immigration judge's factual findings he must provide details, and if the appellant challenges the immigration judge's legal conclusions he must cite authority that supports his position. Id. When the Board dismisses a case, we review the Board's decision for an abuse of discretion. Nazakat v. Immigration and Naturalization Service, 799 F.2d 179, 182 (5th Cir. 1986).

A

We begin with Hodulik's claim that he is a United States citizen because he was adopted while in the United States. An alien child who is adopted by United States citizens does not thereby automatically become a United States citizen. Hein v. Immigration and Naturalization Service, 456 F.2d 1239 (5th Cir. 1972). The adopted child obtains immigration benefits only if his parents submit a visa petition on his behalf. See 8 C.F.R. § 204.

Because Hodulik admitted that he was born in Canada, Hodulik had the burden of proving that he had become a United States citizen. See Corona-Palomera v. Immigration and Naturalization Service, 66 F.2d 814, 818 (9th Cir. 1981). There is no evidence in the record that Mr. and Mrs. Hodulik ever attempted to obtain any immigration benefits for Hodulik. Indeed, there was no evidence regarding whether Mr. and Mrs. Hodulik are themselves United States

citizens. Although given every opportunity, Hodulik failed to prove that he is a United States citizen or that he had gained any immigration status based on his relationship to Mr. and Mrs. Hodulik. Thus, the immigration judge properly found that Hodulik is a native of and citizen of Canada, subject to deportation.

B

We now turn to the three stated justifications for deporting Hodulik starting with the contention that when he re-entered the United States he had been convicted of a crime involving moral turpitude. Pursuant to 8 U.S.C. § 1251(a)(1), an alien is deportable if he was excludable at the time he entered the United States. An alien who has been convicted of a crime involving moral turpitude is excludable.

Hodulik admits that he was convicted of felony larceny for the theft of a Buick Regal automobile in 1987. Hodulik contends that larceny is not a crime involving moral turpitude. Hodulik is plainly incorrect. Crimes of theft, including larceny, "however they may be technically translated into domestic penal provisions, are presumed to involve moral turpitude." Chiaramonte v. Immigration and Naturalization Service, 626 F.2d 1093, 1097 (2d Cir. 1980); see also United States v. Villa-Fabela, 882 F.2d 434, 440 (9th Cir. 1989).

Hodulik also contends that the immigration judge should have ignored his 1987 felony larceny conviction because he committed the crime as a minor. Hodulik, however, has shown only that the North

Carolina court that convicted him also ordered that he serve his sentence as a "committed youthful offender." Under North Carolina law, committed youthful offenders can obtain early release from incarceration. Although some courts have ignored offenses that have been either set aside or expunged under the terms of the Federal Youth Corrections Act or a state equivalent, these cases do not apply to the case at bar because Hodulik's conviction has not been set aside or expunged. See Mestre Morera v. Immigration and Naturalization Service, 662 F.2d 1030 (1st Cir. 1982).

C

Hodulik is also deportable because he failed to obtain the Attorney General's permission before re-entering the United States. Pursuant to 8 U.S.C. § 1182(a)(6)(B)(i), anyone who has been deported may not lawfully re-enter the United States within five years without first obtaining the Attorney General's permission. Valdez-Gaona v. Immigration and Naturalization Service, 817 F.2d 1164 (5th Cir. 1987). Because Hodulik failed to obtain the Attorney General's permission to re-enter the United States, the immigration judge was correct in finding Hodulik deportable.

D

Hodulik is also deportable because, since re-entering the United States, he has committed three additional crimes involving moral turpitude. An alien who has committed two or more separate crimes involving moral turpitude since entering the United States is deportable. 8 U.S.C. § 1251(a)(4). Hodulik admits he committed

three separate larcenies, but he asks the court to ignore these offenses because of his mental state at the time he committed these crimes. Our precedent bars us from either excusing Hodulik's past criminal behavior or from entertaining a collateral attack on Hodulik's past convictions. See Zinnanti v. Immigration and Naturalization Service, 651 F.2d 420, 421 (5th Cir. 1981). Thus, the immigration judge was correct in finding that Hodulik was deportable because of the crimes he has committed since re-entering the United States.

E

Finally, we address Hodulik's argument that we should vacate the immigration judge's decision that he is deportable because Hodulik had a difficult childhood and because the order will separate him from his brothers and sisters. We must reject Hodulik's appeal for sympathy for two reasons. First, Hodulik failed to raise this argument before the immigration judge. On appeal, we will not consider new arguments that were not made to the immigration judge. See Tejeda-Mata v. Immigration and Naturalization Service, 626 F.2d 721, 726 (9th Cir. 1980); Florez-de Solis v. Immigration and Naturalization Service, 796 F.2d 330, 332 n.1 (9th Cir. 1986). Second, Hodulik cannot identify any statutory avenues of relief that are open to him. As the Board recognized, Hodulik is not entitled to any relief under any of the arguments that he has raised. In particular, Hodulik has failed to establish that his deportation will result in "extreme hardship,"

within the meaning of the immigration laws, to him or his family. Thus, we find no basis upon which to vacate the immigration judge's decision that Hodulik is deportable.

IV

For the foregoing reasons, the decision of the Board of Immigration appeals is

A F F I R M E D.