

UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 92-5086
Summary Calendar

Omar Danilo Chow Flores,

Petitioner,

VERSUS

Immigration and Naturalization Service,

Respondent.

Petition for Review of an Order of
the Board of Immigration Appeals
A34 585 236

April 19, 1993

Before JOLLY, DUHÉ, BARKSDALE, Circuit Judges.

PER CURIAM:¹

Petitioner, Omar Danilo Chow Flores, appeals the Board of Immigration Appeals' (BIA) summary dismissal of his Petition for Review of the decision of the immigration judge. The immigration judge denied Flores' application for relief from deportation under Section 212(c) of the Immigration and Nationality Act (INA), as amended, 8 U.S.C. § 1182(c). We affirm.

Background

¹Local 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Flores is a thirty-eight year old married male, a native and citizen of Nicaragua who entered the United States as a legal permanent resident in 1976. In 1986, he was convicted of unlawful possession of a controlled substance. Flores pled guilty and was sentenced to probation for eight years. He subsequently, violated the terms of his probation and was sentenced to serve eight years in prison.

In 1991, the INS initiated deportation proceedings. Flores conceded deportability, but sought relief from Section 212(c) of the INA. The immigration judge denied Flores' application.

On June 12, 1992, Flores filed a Notice of Appeal with the BIA, but did not file a statement or brief in support of his appeal. The BIA issued a summary dismissal of the appeal. Flores has retained new counsel and appeals the BIA's dismissal. Flores has also filed a Motion to Reopen and/or Reconsider and for Stay of Deportation. A ruling on this motion is still pending.

Discussion

Flores argues that the actions of his previous attorney in failing to file a proper appeal with the BIA constitute ineffective assistance of counsel. He also claims that such ineffective assistance of counsel resulted in the denial of his due process rights. These issues are not properly before this Court. Pierre v. INS, 932 F.2d 418 (5th Cir. 1991). These issues are still subject to consideration before the BIA in the Motion to Reopen and/or Reconsider. Therefore, we lack jurisdiction to consider these claims.

Flores does not contest the authority of the BIA to dismiss his appeal or that, under 8 C.F.R. §3.1(d)(1-a), the BIA abused its discretion by such dismissal. Therefore, we do not consider whether the BIA abused its discretion in summarily dismissing Flores' appeal.

For the foregoing reasons, the judgment of the Board of Immigration Appeals is

AFFIRMED.