

UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 93-4017
Summary Calendar

JUAN FELIX LOPEZ-RIOS,

Petitioner,

VERSUS

IMMIGRATION AND NATURALIZATION SERVICE,

Respondent.

Petition for Review of Order of the
Immigration and Naturalization Service
(A35 246 491)

August 31, 1993

Before DAVIS, JONES and DUHE, Circuit Judges.

PER CURIAM:¹

Lopez-Rios appeals the order of the BIA denying his motion to reopen deportation proceedings to apply for suspension of deportation and for stay of deportation. Because petitioner has failed to demonstrate that the BIA abused its discretion in denying petitioner's motion to reopen, we affirm its order.

Petitioner was ordered deported to Mexico following a hearing. The order was predicated on petitioner's entry into the United

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

States as an alien following an earlier deportation. It also was predicated on petitioner's conviction for possession of marijuana with intent to distribute. On appeal to this court, we affirmed the Board's denial of petitioner's request for voluntary departure. **Lopez-Rios v. INS**, No. 91-4209 (April 27, 1992). Petitioner then filed a motion to reopen to apply for suspension of deportation and for stay of deportation. The only ground petitioner asserted which is relevant on this appeal is that the BIA should consider a "missing transcript, and anything else which could . . . properly have been included in the record." The Board denied petitioner's motion to reopen on this ground. The Board stated that petitioner has a long immigration history and had presented no evidence that the nineteen pages apparently unaccounted for in the record had any significance. The Board further found that there was no evidence that the missing nineteen pages operated to petitioner's prejudice.

The BIA allowed petitioner to reopen to apply for suspension of deportation under § 244 of the Act. The Board determined that petitioner had submitted new material evidence in support of the motion. The Board then considered petitioner's evidence of his lengthy stay in the United States, his U.S. citizen spouse and children, the hardship petitioner's family would suffer if petitioner is deported and other hardships petitioner brought to the Board's attention that would result if he were deported. The Board, in the exercise of its discretion, nevertheless concluded that petitioner did not merit suspension of deportation. The Board noted that petitioner's disrespect for both the criminal laws and

the immigration laws of the United States outweighed the equities petitioner presented that militated against his deportation.

We review the Board's denial of motions to reopen under an abuse of discretion standard. We also review on an abuse of discretion standard the Board's decision on a motion to reopen that an alien has failed to establish a prima facie case for discretionary relief. **Garcia-Hernandez v. I.N.S.**, 821 F.2d 222, 224 (5th Cir. 1987).

The Board has considerable discretion in denying motions to reopen. As the Supreme Court observed in **INS v. Abudu**, 485 U.S. 94, 110 (1988), the appropriate analogy is a motion for new trial in a criminal case on the basis of newly discovered evidence.

The Board did not abuse its discretion in determining that the missing nineteen pages from the long immigration record was immaterial to petitioner's case. Petitioner has offered no concrete evidence of how these missing portions of the record would assist him or how they would require a different result in his case. Therefore, the evidence petitioner has provided on the motion to reopen is not prima facie evidence of his eligibility for any relief. The board, therefore, did not abuse its discretion in denying petitioner's motion to reopen based on an insufficient record. **See INS v. Doherty**, 112 S.Ct. 719, 725 (1992); **Abudu**, 485 U.S. at 107.

Petitioner has also failed to demonstrate that the Board abused its discretion in determining that petitioner did not merit suspension of deportation. The reasons given by the Board for this

decision satisfy us that the Board gave adequate consideration to petitioner's argument concerning the equities that he urged weighed in favor of suspending deportation. The Board found that petitioner's criminal conduct simply outweighed those equitable considerations.

AFFIRMED.