

UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 93-4067
Summary Calendar

WINSTON ANTHONY HAYE,

Petitioner,

VERSUS

IMMIGRATION AND NATURALIZATION SERVICE,

Respondent.

Petition for Review of an Order of the
Immigration and Naturalization Service
(INS No. A26 461 730)

June 8, 1993

Before JOLLY, DUHÉ, and BARKSDALE, Circuit Judges.

PER CURIAM:¹

Petitioner, Winston Anthony Haye, seeks review of a final order of the Board of Immigration Appeals ("BIA"). The BIA dismissed Petitioner's claim on its merits, concluding that the Immigration Judge ("IJ") correctly found that Petitioner was deportable. We affirm.

I.

Haye is a native and citizen of Jamaica who entered the United States illegally in August 1985. In 1987 he married a United

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

States citizen, although neither spouse took the necessary steps to complete Haye's naturalization. In December 1989, Petitioner was convicted in the District of Connecticut on two felony counts of possession with intent to distribute and distribution of cocaine. He was sentenced to 51 months in jail, and six years supervised release.

On May 28, 1992, while incarcerated at the federal correctional facility in Big Spring, Texas, Petitioner was served with an order to show cause why he should not be deported. The grounds for deportation were: (1) Entering the United States without inspection, 8 U.S.C. § 1251(a)(1)(B) (Supp. 1993); (2) Having been convicted for an aggravated felony, id. at § 1251(a)(2)(A)(iii); and, (3) Violating laws on controlled substances, id. at § 1251(a)(2)(B)(i).

The initial hearing before the IJ took place on July 29, 1992. Petitioner acknowledged that he received the notice to show cause.² He was informed of his legal rights, including his right to have legal representation. A listing of legal assistance organizations was also provided to the Petitioner. All of these procedural steps were taken in accordance with 8 C.F.R. § 242.16(a) (1992).

At the scheduled hearing, held on October 28, 1992, Petitioner was not represented by counsel. He presented the IJ with a letter requesting that the hearing be continued until he completed his sentence and was financially able to obtain counsel. R. 20. This request was denied. The IJ continued with the hearing, and found

² Petitioner speaks and understands English. See R. 30.

the Petitioner deportable. The BIA, reaching the merits of Haye's claim, agreed with the IJ's conclusions.

II.

On appeal, Petitioner urges that he was denied due process because the IJ refused to either continue his hearing, or change its venue.

A. Change of Venue

Venue lies at the office of the IJ where the INS files a charging document. 8 C.F.R. § 3.19(a). The IJ, for good cause, may change this venue upon motion of the parties. Id. at § 3.19(b). A showing of "good cause" can be made after balancing the factors which the BIA and the INS have deemed relevant to the venue issue.³ See Maldonado-Perez v. I.N.S., 865 F.2d 328, 335-36 (D.C. Cir. 1989). These factors include administrative convenience, expeditious treatment of the case, cost of transporting witnesses, and location of counsel. Id.

The Petitioner has failed to show that any of the relevant factors weighed in favor of changing venue. The hearing was held in Big Springs, Texas, where Haye was incarcerated. Petitioner identified no witnesses that he would have called in a different forum. The IJ provided Haye the opportunity to obtain free legal assistance, although he did not seek such representation. Petitioner has not shown the substantial prejudice necessary for us

³ See Citizens for Fair Util. Regulation v. N.R.C., 898 F.2d 51, 54 (5th Cir.), cert. denied, 498 U.S. 896 (1990) (court should generally defer to an agency's interpretations of its own rules and regulations).

to conclude that the IJ's decision was erroneous. See Calderon-Ontiveros v. I.N.S., 809 F.2d 1050, 1052 (5th Cir. 1987); Patel v. I.N.S., 803 F.2d 804, 807 (5th Cir. 1986).

B. Continuance

The same reasoning that undercuts Petitioner's arguments for changing venue also belies his claim that the IJ erred in not continuing his hearing. Haye does not argue that he was denied assistance of counsel; we note that deportation proceedings are civil, not criminal, in nature. Patel, 803 F.2d at 806. While respondents have the statutory right to legal representation, 8 U.S.C. § 1362, there is no sixth amendment right to government-appointed counsel. Id.; Patel, 803 F.2d at 806.

Haye was given three months to obtain representation, and he was supplied with a listing of organizations that provide free legal assistance. He was made aware of the potential consequences of the proceeding, i.e. he could be found deportable. Despite this, he did not secure representation. There was no error in the IJ's decision to proceed with the October 1992 deportation proceeding.

III.

Petitioner also sought two forms of statutory relief. First, he argues that he is entitled to a discretionary waiver under 8 U.S.C. § 1182(h). This section authorizes the Attorney General to waive deportations which are based on "a single offense of simple possession of 30 grams or less of marijuana" Id. Haye was convicted of cocaine distribution, and this waiver does not apply.

The second statutory relief Petitioner seeks is 8 U.S.C. § 1255a (Supp. 1993). This section does empower the Attorney General to "adjust" the status of an alien; however, this adjustment is not available to those who have been convicted of a felony. Id. at § 1255a(a)(4)(B). Petitioner's felony drug conviction forecloses this avenue.

IV.

For the foregoing reasons, the decision of the Board of Immigration Appeals is AFFIRMED.