UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

No. 93-4223

(Summary Calendar)

WOLFGANG DIETRICH HOFMANN,

Petitioner,

VERSUS

IMMIGRATION AND NATURALIZATION SERVICE,

Respondent.

Petition for Review of an Order of the
Immigration and Naturalization Service
(A26 267 366)

(September 17, 1993)

Before JOLLY, WIENER, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

Petitioner, Wolfgang Dietrich Hofmann, seeks judicial review of the decision of the Board of Immigration Appeals ("the Board"), pursuant to 8 U.S.C. § 1105a (1988). The Board dismissed Hofmann's appeal from the immigration judge's denial of his application to become a permanent resident. Finding no reversible error, we affirm.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Hofmann is a native of Germany who entered the United States as a nonimmigrant visitor for pleasure. He remained in the United States, and is now married to a U.S. citizen. Hofmann was issued an order to show cause why he should not be deported, because he had been convicted of a controlled substance violation in Germany. *See* 8 U.S.C. § 1251(a)(11) (1988), *as amended* 8 U.S.C.A. § 1251(a)(2)(B)(i) (West Supp. 1993). When Hofmann applied to adjust his status to that of a permanent resident, pursuant to 8 U.S.C. § 1255 (1988), the immigration judge ruled that Hofmann was not eligible for the adjustment, because he was not admissible to the United States for permanent residence, as required by § 1255(a)(2). The immigration judge reasoned that Hofmann was not admissible because he had been convicted of a controlled substance violation in Germany. *See* 8 U.S.C. § 1182(a)(23)(A) (1988), *as amended* 8 U.S.C.A § 1182(a)(2)(A)(i)(II) (West Supp. 1993). The immigration judge rejected Hofmann's argument that his conviction did not require his exclusion from the United States because the statute which he violated did not require guilty knowledge.[1]

The only issue before us is whether the German statute which Hofmann violated requires guilty knowledge.[2] At the time of

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[1] Hofmann admitted that he was convicted of violating the German narcotics law.

[2] Hofmann relies on *Lennon v. Immigration & Naturalization Serv.,* 527 F.2d 187, 194 (2nd Cir. 1975), for the proposition that an alien is not excludable for violating a statute which does not require guilty knowledge. We need not decide whether we agree with the rule adopted by the Second Circuit in *Lennon,* because Hofmann has not shown that the German law in question did not require guilty knowledge. *See Pasquini v. Immigration & Naturalization Serv.,* 557 F.2d 536, 539 (5th Cir. 1977) (assuming without deciding

Hofmann's conviction, the statute))Section 11, paragraph 1, number 4 of West Germany's Narcotics Law[3]))provided:

> Anyone who is in possession of narcotic drugs without having obtained such drugs on the basis of a license . . . or by means of a purchasing permit . . . is punished by imprisonment of up to three years or by a fine.

Although Section 11 is silent on the subject of mens rea, Section 15 of the Criminal Code provides: "If a statute does not expressly make negligent conduct punishable, it shall be construed to require intentional conduct."[4] The immigration judge concluded that, although Section 11 does not explicitly mention mens rea, it is construed in Germany to require a showing of intent.

Hofmann argues that "if a statute does not expressly mention intent or guilty knowledge, then the alien is still eligible for permanent residency status because such foreign convictions do not conform to domestic constitutional standards." We disagree. Neither of the cases cited by Hofmann))*Lennon v. Immigration & Naturalization Serv.,* 527 F.2d 187, 194 (2nd Cir. 1975), and *Pasquini v. Immigration & Naturalization Serv.,* 557 F.2d 536, 539 (5th Cir. 1977)))supports the proposition that a foreign conviction justifies exclusion only where the statute of conviction expressly mentions intent. In *Lennon* the Second Circuit considered a British

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that the holding in *Lennon* was correct, and finding that the petitioner was excludable from the United States because the foreign law in question required guilty knowledge).

[3] Betaubungsmittelgesetz in der Fassung vom 10. Januar 1972, *Bundesgestzblatt* I, p.1.

[4] Section 15 was not enacted until several years after Hofmann's conviction.

law which, like the German statute at issue here, did not mention mens rea. *See id.*, 527 F.2d at 191. However, that court determined that the British law did not require guilty intent only after considering at length the interpretation of the statute by the House of Lords. *See id.* at 191-92. *Pasquini* likewise fails to offer any support for the proposition that the foreign statute must expressly mention intent. Consequently, we are not persuaded that Section 11 fails to require guilty knowledge merely because it is not expressly mentioned.

Hofmann argues, however, that the enactment of Section 15 of the Criminal Code proves that Section 11 did not require guilty knowledge. According to Hofmann, it would have been unnecessary to enact Section 15 if criminal laws such as Section 11 had implicitly required a showing of intent. We disagree. Legislation may be enacted to codify an existing, judicially-recognized legal rule, and the immigration judge determined that that was the purpose of Section 15. The immigration judge relied on information provided by the Library of Congress, including German judicial decisions and the legislative history of the Narcotics Law, which indicated that Section 11 was construed to require intent, both before and after Section 15 was enacted. Hofmann does not argue that that is an incorrect characterization of the judicial interpretation of Section 11. Hofmann merely points out that the judicial decisions upon which the Library of Congress based its analysis were issued after his arrest. However, that fact does not impugn the conclusion reached by the library's representative, since she

indicated that the requirement of intent was "in keeping with general principles of German law":

> In Germany, criminal offenses are punishable only if they are committed intentionally, unless statutory provisions specifically state that negligent commission is punishable. Since 1975, this is expressly stated in section 15 of the Criminal Code . . . . Before 1975, this principle was also universally recognized in Germany.

Because Hofmann has not shown, or even seriously argued, that the analysis of Section 11 provided by the Library of Congress is incorrect, we are not persuaded that the immigration judge erred in finding that Section 11 requires guilty knowledge. We therefore find no reversible error in the Board's dismissal of Hofmann's appeal, and we **AFFIRM**.