UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

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No. 93-4844
Summary Calendar
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JOSE LUIS LIZARDO-ABASTA,

Petitioner,

VERSUS

IMMIGRATION AND NATURALIZATION SERVICE,

Respondent.

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Petition for Review of an Order of the
Board of Immigration Appeals
(A42 329 922)
_____

(September 29, 1994)

Before JONES, BARKSDALE, AND BENAVIDES, Circuit Judges.

PER CURIAM:[1]

Petitioner challenges the decision of the Board of Immigration
Appeals (BIA) upholding the immigration judge's (IJ) deportation
order. We **DISMISS** this petition for lack of jurisdiction.

I.

Jose Luis Lizardo-Abasta, a native and citizen of Mexico, was
admitted to the United States as a conditional immigrant in 1990.
On January 19, 1992, he entered the United States from Mexico

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[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should not be published.

without presenting himself for inspection, and on that occasion, was in the company of his girlfriend, a Mexican citizen, who also entered the United States without inspection and without proper entry documents. After arresting Lizardo-Abasta, the Immigration and Naturalization Service commenced deportation proceedings against him, asserting violations of 8 U.S.C. §§ 1251(a)(1)(B) (entering the United States without inspection) and 1251(a)(1)(E)(i) (smuggling).

Following a deportation hearing, the IJ ordered Lizardo-Abasta deported and denied a request for voluntary departure. Lizardo-Abasta appealed only the deportability findings to the BIA, which found no error in the IJ's decision.

II.

In his petition to this court, Lizardo-Abasta raises the single issue of whether the IJ abused her discretion in refusing to grant a voluntary departure. Prior to examining this issue, we must ensure that we possess jurisdiction.

Section 106(a) of the Immigration and Nationality Act empowers this court with jurisdiction to review final orders of deportation. 8 U.S.C. § 1105a(a). However, this power is circumscribed by the requirement that

> [a]n order of deportation or of exclusion shall not be reviewed by any court if the alien has not exhausted the administrative remedies available to him as of right under the immigration laws and regulations ....

8 U.S.C. § 1105a(c). The failure to raise an issue before the BIA constitutes a lack of exhaustion of administrative remedies.

Rodriguez v. I.N.S., 9 F.3d 408, 414 (5th Cir. 1993); *Campos-Guardado v. I.N.S.*, 809 F.2d 285, 291 (5th Cir.), *cert. denied*, 484 U.S. 826 (1987). This statutory mandate of administrative exhaustion constitutes a jurisdictional prerequisite to consideration of the issue before the court. ***Townsend v. U.S. Dep't of Justice I.N.S.***, 799 F.2d 179, 181 (5th Cir. 1986).

When Lizardo-Abasta appealed the deportation order to the BIA, he did not raise the voluntary departure issue.[2] The BIA, in its decision, noted that he had "not challenged the immigration judge's denial of voluntary departure in the exercise of discretion and we agree with her decision in that regard." Lizardo-Abasta's failure to raise the issue of voluntary departure before the BIA constitutes a failure to exhaust available administrative remedies. Accordingly, this court lacks jurisdiction to consider his claim.

III.

For the foregoing reason, the petition is

DISMISSED.

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[2]   In his Notice of Appeal (Form EOIR-26), Lizardo-Abasta's stated reason for the appeal to the BIA was:

> The judge abused her discretion by giving credibility to government witnesses [sic] testimony which was clearly contradictory regarding smugglees [sic] legal status in this country. A continuance should have been granted to allow the smugglees [sic] legal status to be cleared up with documentary evidence available thru the Services [sic] computer index. Respondent is a lawful permanent resident of the U.S. and if documentary evidence indicates that smugglee [sic] is a permanent resident of the United State[s] itwould [sic] appear that no entry was made.