

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-4927
Summary Calendar

ELTON DENVOR HAMILTON,

Petitioner,

versus

IMMIGRATION AND NATURALIZATION
SERVICE,

Respondent.

Petition for Review of an Order
of the Immigration and Naturalization Service

(A29 998 407)

(December 30, 1993)

Before POLITZ, Chief Judge, GARWOOD and BARKSDALE, Circuit Judges.

PER CURIAM:*

In an effort to avoid deportation Elton Denvor Hamilton petitions for review of the summary dismissal of his appeal by the Board of Immigration Appeals and its refusal to reopen his case. Finding no abuse of discretion, we affirm.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Background

A native and citizen of Belize, Hamilton entered the United States without inspection in September of 1986. At a deportation hearing held six and one-half years later, an immigration judge found him deportable under section 241(a)(1)(B) of the Immigration and Nationality Act.¹ Although the judge informed him of his right to obtain counsel, provided him with a list of legal aid organizations, and offered to continue proceedings until he could procure representation, Hamilton elected to proceed *pro se*. Hamilton admitted his illegal entry into the United States but expressed concern over being deported to Belize; when questioned further, however, he conceded that he had not entered the United States to seek asylum. Although the judge considered suspension of deportation,² Hamilton had not yet attained the required seven years of continuous presence in the United States.

Hamilton timely appealed to the BIA which summarily dismissed after determining that the appeal lacked an arguable basis in law or fact.³ On October 14, 1993, after petitioning this court for review of the summary dismissal, Hamilton filed a motion to reopen with the BIA to apply for suspension of deportation. Although Hamilton now possessed the requisite seven years of residency, the BIA denied his request. Petition for review of this denial has been consolidated with the petition for review of the summary

¹8 U.S.C. § 1251(a)(1)(B).

²8 U.S.C. § 1254(a).

³8 C.F.R. § 3.1(d)(1-a)(D).

dismissal.

Analysis

The legal sufficiency of Hamilton's appeal to the BIA controls the outcome of his petition to this court. If, as the BIA found, the appeal lacked an arguable basis in law or fact that concludes the matter. Both the summary dismissal and the refusal to reopen turn on whether the BIA abused its discretion. Barring such a finding, the order of deportation must stand.⁴

The BIA may summarily dismiss an appeal if, after reviewing the record, it determines that the appeal "lacks an arguable basis in law or fact or . . . is filed for an improper purpose, such as to cause unnecessary delay."⁵ Hamilton's appeal clearly warranted summary dismissal. The record confirms that the immigration judge gave Hamilton ample opportunity to procure representation. The record likewise refutes his claims for relief -- Hamilton admitted lack of qualification for asylum and he was statutorily ineligible for suspension of deportation.

The denial of Hamilton's motion to reopen also was appropriate. Assuming eligibility for relief, the decision to grant or to deny such a motion lies within the BIA's sound

⁴See **Verduzco-Arevalo v. I.N.S.**, 989 F.2d 186 (5th Cir. 1993) (summary dismissal reviewed for abuse of discretion); **Ganjour v. I.N.S.**, 796 F.2d 832 (5th Cir. 1986) (denial of motion to reopen upset only for abuse of discretion).

⁵8 C.F.R. § 3.1(d)(1-a)(D).

discretion.⁶ In exercising this discretion, the BIA may consider dilatory tactics employed to delay departure in the hope of satisfying residency prerequisites.⁷ The BIA concluded that Hamilton filed his meritless appeal to prolong his stay long enough to meet the seven-year residency requirement for suspension of deportation. The BIA refused to condone such behavior. We cannot fault that decision.

The petitions for review are DENIED.

⁶**I.N.S. v. Doherty**, _____ U.S. _____, 112 S.Ct. 719 (1992); **Hernandez-Cordero v. I.N.S.**, 819 F.2d 558, 560 (5th Cir. 1987).

⁷**I.N.S. v. Rios-Pineda**, 471 U.S. 444 (1985); **Men Keng Chang v. Jiugni**, 669 F.2d 275 (5th Cir. 1982); **Matter of Patel**, Int. Dec. 3015 (BIA 1988).