

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-5190
Summary Calendar

GENARO SALAZAR-PORRAS,

Petitioner,

versus

IMMIGRATION AND NATURALIZATION
SERVICE,

Respondent.

Petition for Review of an Order of the
Immigration and Naturalization Service
(A90 738 666)

(July 13, 1994)

Before GARWOOD, SMITH and BARKSDALE, Circuit Judges.*

PER CURIAM:

Petitioner Genaro Salazar-Porras (Salazar), a native and national of Mexico, who illegally entered the United States without inspection in 1981 and had had his status adjusted to that of lawful permanent resident in 1990 pursuant to the "amnesty"

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

provisions of 8 U.S.C. § 1255(a), appeals the decision of the Board of Immigration Appeals (BIA) which dismissed his appeal from the December 1992 order of the Immigration Judge (IJ) finding him deportable as charged under 8 U.S.C. § 1251(a)(1)(E)(i), as an alien who on or about December 7, 1991 "knowingly . . . encouraged, induced, assisted, abetted, or aided any other alien," in this case, Salazar's wife and her cousin, Mexican nationals, "to enter or to try to enter the United States in violation of law."

Salazar admitted that on the occasion in question he knowingly assisted his wife's illegal entry from Mexico into the United States without inspection, and on that account was deportable under section 1251(a)(1)(E)(i). Salazar, however, denied that he had thus assisted the illegal entry of his wife's cousin, who on the same occasion illegally entered without inspection in company with Salazar's wife, and maintained that the cousin had just "tagged along." Salazar sought a waiver of deportation under 8 U.S.C. § 1251(a)(1)(E)(iii) which provides that the Attorney General "in his discretion" may waive deportation under section 1251(a)(1)(E)(i) as to "any alien lawfully admitted for permanent residence if the alien has encouraged, induced, assisted, abetted, or aided *only* the alien's spouse, parent, son, or daughter (*and no other individual*) to enter the United States in violation of law." (emphasis added). The IJ found that Salazar had violated section 1251(a)(1)(E)(i) not only with respect to his wife but also with respect to his wife's cousin, and was thus deportable under that provision both with respect to his wife and the wife's cousin, and that accordingly Salazar was not eligible for discretionary relief under section

1251(a)(1)(E)(iii). Alternatively, the IJ ruled that even if Salazar were eligible for such discretionary relief, it should be denied him. Salazar, who is and has been at all stages represented by counsel, appealed to the BIA, claiming, *inter alia*, that the evidence was insufficient that he violated section 1251(a)(1)(E)(i) with respect to the cousin and that the proceedings before the IJ were not properly conducted. The BIA affirmed the IJ's determination that Salazar was deportable and had violated section 1251(a)(1)(E)(i) with respect to his wife's cousin, as well as his wife, and hence was not eligible for discretionary relief under section 1251(a)(1)(E)(iii), and it rejected Salazar's complaints of the IJ's conduct, also concluding in that regard that no prejudice was shown. The BIA hence did not reach the question of whether, if eligible, Salazar merited discretionary relief under section 1251(a)(1)(E)(iii).

Salazar petitions for review of the BIA's decision. We affirm.

Salazar's only clear contention is that "[t]here was no credible evidence . . . that the Appellant knowingly has encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of law except for his wife." This contention is wholly without merit. Salazar does not contest that his wife's cousin was an alien and that he illegally entered the United States without inspection in the company of Salazar's wife on December 7, 1991; nor does Salazar deny what the evidence clearly shows, namely that at and before the entry in question by his wife and her cousin Salazar knew the

cousin, as well as the wife, were aliens and intended to then enter the United States together illegally and without inspection; there is no evidence or claim that Salazar was in any way threatened, tricked or coerced in respect to the cousin's said entry or that he ever attempted to discourage or prevent it. Salazar's sole claim is that he did nothing to encourage, induce, assist, abet or aid the cousin's illegal entry, and that the cousin just "tagged along" with Salazar and his wife, something Salazar could not prevent.

Salazar's own testimony shows that he had been living in Dallas at least since 1990; that in February 1991, after having been awarded lawful permanent resident status in May 1990, he went to Monterrey, Mexico, and there married his wife, who lived there, and then returned to the United States, and Dallas, alone. He went back to Monterrey, Mexico, in November 1991, intending to take his wife into the United States illegally. He had known his wife's cousin, who also lived in Monterrey, about three years. According to Salazar, the cousin's father, who lived in Dallas, gave Salazar some items to take to the cousin in Monterrey.¹ Salazar delivered the items to the cousin in Monterrey. Subsequently, in Monterrey, the cousin asked to accompany Salazar and his wife to the United States. Salazar testified "I told him that if he wanted to come along or accompany us, it's fine, but I couldn't help him cross over." Salazar, his wife and her cousin rode the bus together from

¹ The Border Patrol Agent who questioned Salazar when he, his wife and her cousin were stopped in the El Paso airport shortly after the illegal crossing, testified that Salazar told him that the cousin's father asked Salazar to bring the cousin to the United States just before Salazar left for Monterrey in November 1991.

Monterrey to Juarez, just across the river from El Paso, where they spent the night in the same hotel there. In Juarez, Salazar called a coyoteSOan alien smugglerSOwhose number had been given Salazar by people whom the coyote had previously brought into the United StatesSOand, the day after they arrived in Juarez, the coyote, pursuant to Salazar's call came to the hotel and picked up the wife and cousin "to cross them both over the river." Salazar stated that he did not pay the coyote when his wife and cousin were picked up at the hotel "but when he would bring them over I would pay him." He also testified he was only to pay for his wife, not for the cousin, but later stated, "I paid \$50 to the other people to help them cross." Salazar was carried over legally by the coyote group and then taken to meet his wife and testified he knew the cousin "would be with her," as indeed he was. They met at the coyote group's trailer in the United States. There the coyote furnished three plane tickets (consecutively numbered) from El Paso to Dallas, one each for Salazar, his wife and the cousin. Obviously, this was by prearrangement. Salazar then paid the coyote cash (U.S. currency) for all three tickets, and the coyote group took Salazar, his wife and her cousin to the El Paso airport, where the latter two followed Salazar until all were stopped by the Border Patrol. All of this occurred on December 7, 1991, the day after Salazar, his wife and her cousin first arrived in Juarez.

The BIA's factual findings are reviewed under the substantial evidence rule. *Rojas v. INS*, 937 F.2d 186, 189 (5th Cir. 1991). See also *INS v. Elias-Zacarias*, 112 S.Ct. 812, 815-17 (1992); *Silwany-Rodriguez v. INS*, 975 F.2d 1157, 1160 (5th Cir. 1992). The

above discussed evidence clearly constitutes substantial evidence sufficient to sustain the BIA's finding that Salazar knowingly assisted the cousin to enter the United States illegally. As the BIA noted, Salazar had the coyote's telephone number and called him and caused him to come by and pick up the wife and cousin to take them across the river; and he paid for all three plane tickets the coyote acquired for them to fly from El Paso to Dallas the same day. Nor do we find that the BIA in any way improperly construed or broadened section 1251(a)(1)(E)(i). The BIA correctly observed that it was immaterial whether when Salazar went to Monterrey in November he did so with the intent of bringing back the cousin.

Salazar's miscellaneous complaints of the conduct of the proceedings before the IJ are all without merit. We have held hearsay may be admissible and considered in immigration proceedings so long as it meets the tests of fundamental fairness and probity, *see Bustros-Torres v. INS*, 898 F.2d 1053, 1055-56 (5th Cir. 1990), and none of the material hearsay here fails either of those tests. Of course, evidence of what Salazar said to the Border Patrol Agent comes in under a recognized exception to the hearsay rule. In any event, the BIA and the IJ, too, relied on Salazar's own testimony. There is absolutely no basis for Salazar's assertion that the relevant BIA or IJ findings rested on evidence that was not admissible or was entitled to little weight. The complaint about restricting cross-examination of the Border Patrol Agent as to what acts he knew Salazar performed is wholly without merit; the agent had admitted he knew nothing apart from what Salazar, the wife and cousin told him and what he briefly observed at the airport;

Salazar's counsel was allowed ample latitude in cross-examination, and was obviously trying to get the agent to express an opinion or interpretation of what constituted assistance or the like under section 1251(a)(1)(E)(i). Neither error nor prejudice is shown in this respect.

The decision of the BIA is

AFFIRMED.