UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

No. 94-40009

(Summary Calendar)

MIGUEL VALLES CHAVEZ,

Petitioner,

versus

IMMIGRATION AND NATURALIZATION SERVICE,

Respondent.

Petition for Review of an Order of the Immigration and Naturalization Service (A91-191-452)

(June 27, 1994)

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

PER CURIAM:[*]

Miguel Valles Chavez, a native and citizen of Mexico, entered the United States without inspection in 1971. Chavez subsequently was convicted of two crimes of moral turpitude))auto burglary and aggravated battery. The Immigration and Naturalization Service subsequently issued an Order to Show Cause why Chavez should not be deported. After holding a deportation hearing, the Board of

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Immigration Appeals ("BIA") found Chavez to be deportable pursuant to 8 U.S.C. § 1251(a)(2)(A)(ii) (Supp. IV 1992), which provides that "[a]ny alien who at any time after entry is convicted of two or more crimes involving moral turpitude . . . is deportable."

On appeal, Chavez contends that because his status was adjusted to lawful permanent resident alien after his first conviction but preceding the second, he has been convicted of only one crime of moral turpitude after his last "entry" into the United States. In other words, Chavez contends that his change in status is equivalent to an "entry." We disagree.[1] The Immigration and Naturalization Act defines "entry" as "any coming of an alien into the United States." 8 U.S.C. § 1101(a)(13) (1988). Thus, a change of status does not equate with an "entry." Therefore, as it is undisputed that Chavez entered the United States in 1971 and was convicted of two crimes involving moral turpitude after that date, the government has demonstrated by clear and convincing evidence that Chavez has no lawful right to remain in this country.

Chavez further argues that because the INS erroneously granted Chavez the status of lawful permanent resident alien,[2] the INS should have initiated a proceeding to rescind that status before

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[1] We must affirm the decision of the BIA "if it has made no error of law and if reasonable, substantial and probative evidence on the record supports its factual findings. For the BIA to have declared an alien deportable, the government must have demonstrated by clear and convincing evidence that the alien has no lawful right to remain in this country." *Howard v. INS*, 930 F.2d 432, 434 (5th Cir. 1991) (citations omitted).

[2] *See* 8 U.S.C. § 1255a(b)(1)(C)(ii) (providing that aliens convicted of a felony are ineligible for adjustment of status).

initiating deportment proceedings. However, Chavez failed to present this issue to the BIA and, therefore, has failed to preserve it for appeal. *See Yahkpua v. INS*, 770 F.2d 1317, 1320 (5th Cir. 1985). Moreover, the INS did not initiate Chavez's deportment proceeding based on the erroneous grant of lawful-permanent-resident-alien status. Instead, the INS initiated deportment proceedings based upon the independent ground that Chavez was convicted of two crimes of moral turpitude.

For the foregoing reasons, we AFFIRM the order of the BIA.