

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 94-40372

Summary Calendar

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LEONEL RODRIGUEZ-GARCIA,

Petitioner,

v.

IMMIGRATION & NATURALIZATION SERVICE,

Respondent.

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Petition for Review of an Order of the  
Board of Immigration Appeals  
(A22 929 743)

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(December 6, 1994)

Before KING, JOLLY and DeMOSS, Circuit Judges.

PER CURIAM:\*

Leonel Rodriguez-Garcia appeals the summary dismissal of his appeal to the Board of Immigration Appeals ("BIA"). Specifically, Rodriguez-Garcia contends that the BIA abused its discretion in summarily dismissing his appeal two grounds: (1) he had failed to provide the BIA with a meaningful statement of the reasons for his appeal, 8 C.F.R. § 3.1(d)(1-a)(i)(A); and (2)

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

he had failed to file a brief after informing the BIA that he intended to do so. 8 C.F.R. § 3.1(d)(1-a)(i)(E). We affirm.

#### **I. FACTUAL AND PROCEDURAL BACKGROUND.**

In 1971, Rodriguez-Garcia entered the United States without inspection at Brownsville, Texas. He has resided in the United States since that time, married, and fathered three children, all of whom are United States citizens. Since his entry into the United States, Rodriguez-Garcia has had numerous criminal convictions, including voluntary manslaughter, driving while intoxicated, carrying a concealed weapon, possession of marijuana, and making a false claim to citizenship.

On August 6, 1992, the Immigration and Naturalization Service ("INS") issued an Order to Show Cause ("OSC") in which Rodriguez-Garcia was charged with being deportable. On November 26, 1993, after a hearing in which Rodriguez-Garcia was represented by counsel, an Immigration Judge: (1) denied Rodriguez-Garcia's request for voluntary deportation; (2) denied his request for registry; and (3) ordered Rodriguez-Garcia deported to Mexico. The Immigration Judge's order of deportation was based upon two findings: (1) Rodriguez-Garcia had entered the country without inspection as an alien in 1971 in violation of Section 241(a)(1)(B) of the Immigration and Nationality Act; and (2) Rodriguez-Garcia had been convicted twice of the possession of marijuana in violation of Section 212(a)(2)(B)(i) of the Immigration and Nationality Act.

On December 9, 1993, Rodriguez-Garcia filed a standardized form titled "Notice of Appeal to the Board of Immigration Appeals of Decision of Immigration Judge," in which he set forth the following reasons for his appeal:

- a) The Immigration Judge erred in finding that Respondent [Rodriguez-Garcia] was deportable
- b) The immigration judge abused her discretion in premitting Respondent's application for suspension of deportation.
- c) The Immigration Judge erred in determining that the Respondent was statutorilly [sic] inegligible [sic] to establish good moral character.
- d) The Immigration Judge erred in determining that Respondent was not eligible for Registry.

Rodriguez-Garcia also checked a box on this form which indicated that he intended to file a separate written brief or statement in support of his appeal; however, no such brief or statement was ever filed.<sup>1</sup>

On March 30, 1994, the BIA summarily dismissed Rodriguez-Garcia's appeal on two grounds: (1) he had failed to adequately specify the grounds for his appeal in violation of 8 C.F.R. § 3.1(d)(1-a)(i)(A); and (2) he had failed to file a brief or

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<sup>1</sup> On February 25, 1994, Rodriguez-Garcia's counsel filed a "Motion to Extend Time to File Brief" with the United States Department of Justice Executive Office for Immigration Review, Office of the Immigration Judge, El Paso, Texas, in which Rodriguez-Garcia requested an additional fifteen days in which to file a brief in support of his appeal to the BIA. This motion stated that "the undersigned [counsel] was unable to complete the brief" and that the request for additional time was "not made for purposes of undue or frivolous delay . . . ." While there is no indication in the record that Rodriguez-Garcia ever obtained a ruling on this motion, it is apparent that Rodriguez-Garcia still had not submitted a brief by March 30, 1994, the date that the BIA summarily dismissed his appeal. In any event, Rodriguez-Garcia does not contest the absence of a ruling on his motion for an extension of time, and we therefore need not consider the issue on appeal.

statement in support of his appeal as he had indicated he would, and had not subsequently offered a reasonable explanation of his failure to file such a statement, all in violation of 8 C.F.R. § 3.1(d)(1-a)(i)(E). As a result of its summary dismissal, the BIA ordered the deportation of Rodriguez-Garcia pursuant to the Immigration Judge's earlier decision. Rodriguez-Garcia filed a timely appeal to this court.

### III. ANALYSIS

We will reverse the BIA's decision to summarily dismiss an appeal of an order of deportation only upon the showing of an abuse of discretion. Medrano-Villatoro v. INS, 866 F.2d 132, 134 (5th Cir. 1989). Under 8 C.F.R. § 3.1(d)(1-a)(i)(A), the BIA may summarily dismiss an appeal if "[t]he party concerned fails to specify the reasons for his appeal on Form EOIR-26 or Form EOIR-29 (Notices of Appeal) or other document filed therewith." In Medrano-Villatoro v. INS, we stated that a notice of appeal

must inform the BIA what was wrong with the Immigration Judge's decision and why. The statement must specify whether the petitioner challenges erroneous findings of fact or law, or both. If a question of law is presented, supporting authority must be cited; and if the dispute is on the facts, the particular details at issue must be identified. Moreover, if the denial of discretionary relief is in question, the statement of reasons must disclose whether the alleged error relates to grounds of statutory eligibility or the exercise of discretion.

866 F.2d at 133-34 (citations omitted); accord Verduzco-Arevalo v. INS, 989 F.2d 186, 187 (5th Cir. 1993).

It is clear that the notice of appeal filed by Rodriguez-Garcia does not comply with the minimum requirements as set forth

in Medrano-Villatoro. Rodriguez-Garcia's notice of appeal consisted of a series of conclusory statements alleging both legal and factual error, yet Rodriguez-Garcia cited no supporting authority nor provided any factual details. On this basis alone, the notice of appeal was insufficient to adequately apprise the BIA of the reasons for Rodriguez-Garcia's appeal; thus, it was not an abuse of discretion for the BIA to summarily dismiss Rodriguez-Garcia's appeal pursuant to 8 C.F.R. § 3.1(d)(1-a)(i)(A).<sup>2</sup>

#### IV. CONCLUSION

Finding no abuse of discretion in the BIA's decision to summarily dismiss Rodriguez-Garcia's appeal, we AFFIRM.

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<sup>2</sup> Because we find summary dismissal was appropriate under 8 C.F.R. § 3.1(d)(1-a)(i)(A), we need not address the propriety of summary dismissal pursuant to the alternate ground cited by the BIA, 8 C.F.R. § 3.1(d)(1-a)(i)(E).