UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 94-40543
Summary Calendar

ADISAK CHANTAVONG,

Petitioner-Appellant,

VERSUS

IMMIGRATION AND NATURALIZATION SERVICE,

Respondent-Appellee.

On Appeal from the United States
Immigration and Naturalization Service
(A27 317 805)

October 24, 1995

Before DAVIS, BARKSDALE and DeMOSS, Circuit Judges.

PER CURIAM:[1]

Chantavong appeals the BIA'S order denying his second motion to reopen his deportation proceeding. We affirm.

Chantavong was charged with deportability based on prior felony convictions in Tarrant County, Texas. These convictions included theft and aggravated robbery with a deadly weapon. Following a hearing at which Chantavong was represented by counsel, the Immigration Judge found petitioner deportable as charged and

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

ordered Chantavong deported. Petitioner took no appeal from that order, filing instead a motion to reopen the proceedings. The Board of Immigration Appeals (BIA) denied the motion, and Chantavong did not appeal. Rather he filed a second motion to reopen, alleging essentially the same grounds for relief he had asserted in the first. The BIA again denied the motion. It is this second BIA order that Petitioner appeals. Chantavong's claim is that his counsel was ineffective and that the BIA failed to consider all the relevant factors he raised in support of his application.

The BIA denied the motion to reopen on a number of grounds, of which we need only consider one. The Board concluded that petitioner had not met the threshold requirements of 8 C.F.R. § 3.2 (1994). In other words, he did not show that the new evidence offered was material and was not available and could not have been discovered or presented at the former hearing. 8 C.F.R. § 3.2 (1994).

We review this finding for abuse of discretion, Ogbemudia v. INS, 988 F.2d 595, 600 (5th Cir. 1993), and find none. All the documents at issue were either undated or dated prior to the time of his original hearing. Chantavong has failed to demonstrate that he did not possess or could not have discovered this evidence previously. There is no need, therefore, to consider its materiality.[2]

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[2] We also agree with the BIA that petitioner is not entitled to reopen based on ineffective assistance of counsel. Chantavong has not shown that he would have been entitled to relief if counsel had produced the evidence petitioner contends he should have produced. See Prichard-Ciriza v. INS, 978 F.2d 219, 222 (5th Cir.

We affirm the BIA's order.

AFFIRMED.

1992).