

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-40561
Summary Calendar

JULIO DIAZ-SANCHEZ,

Petitioner,

versus

IMMIGRATION AND NATURALIZATION
SERVICE,

Respondent.

Petition for Review of an Order of
the Board of Immigration Appeals

(A 30 077 262)

(December 22, 1994)

Before POLITZ, Chief Judge, DAVIS and DeMOSS, Circuit Judge.

PER CURIAM:*

Julio Diaz-Sanchez petitions for review of the decision of the Board of Immigration Appeals denying discretionary relief from deportation under section 212(c) of the Immigration and Nationality

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

Act.¹ The BIA found Diaz-Sanchez ineligible for such relief because in December of 1988 he was convicted of a drug-related felony and sentenced to 20 years imprisonment. He was serving that sentence at the time of his February 28, 1994 hearing before the immigration judge at the Big Springs Correctional Facility. As of that date, he had been imprisoned more than five years.

Diaz-Sanchez contends that the five-year imprisonment bar to eligibility to section 212(c) relief should not apply to him because his offenses -- conspiracy to distribute cocaine and related substantive offenses -- were not classified as aggravated felonies within the meaning of the INA until after the date of his conviction. He also contends that the Immigration and Naturalization Service impermissibly delayed instituting deportation proceedings. Diaz-Sanchez did not present these issues to the BIA and we therefore have no jurisdiction to consider them.²

Diaz-Sanchez seeks to excuse this omission by asserting that he does not understand English and was forced to proceed to hearing without the aid of counsel. The record does not support these contentions and we are not otherwise persuaded. At the January 1994 hearing the immigration judge granted Diaz-Sanchez a continuance for a month to give him an opportunity to secure counsel. He was informed that the matter would proceed on February 28, 1994. The hearing resumed as scheduled and no counsel was present. Diaz-Sanchez requested a further continuance but not

¹8 U.S.C. § 1182(c).

²**Rodriguez v. INS**, 9 F.3d 408 (5th Cir. 1993).

because of the absence of counsel; rather, he informed the judge that he wished to secure some undefined documentation. The request was denied and the hearing was had. These issues likewise were not raised before the BIA and cannot be first raised before this court.

We are without jurisdiction to review the matter and the petition, therefore, is DISMISSED.