

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 94-40762

Summary Calendar

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HUMBERTO CARDENAS-ALVARADO,

Petitioner,

versus

UNITED STATES IMMIGRATION and  
NATURALIZATION SERVICE,

Respondent.

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Petition for Review of an Order  
of the Board of Immigration Appeals  
(A41-934-676)

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(February 9, 1995)

Before GARWOOD, HIGGINBOTHAM, and DAVIS, Circuit Judges.

PER CURIAM:\*

Humberto Cardenas-Alvarado petitions this court for review of the Board of Immigration Appeals' (BIA) decision affirming the immigration judge's decision to deport Cardenas-Alvarado pursuant to 8 U.S.C. § 1251(a)(11). We find the BIA's decision is based upon the evidence presented and is substantially reasonable. Accordingly, we dismiss the petition for review.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

I.

The Immigration and Naturalization Service charged Cardenas-Alvarado with deportability on the basis of a conviction for possession of marijuana. At the deportation hearing, Cardenas-Alvarado's lawyer denied the government's allegation of conviction. In response, the government produced a copy of conviction records indicating that Humberto A. Cardenas had been convicted of possession of marijuana. The immigration judge asked whether Cardenas-Alvarado's lawyer had any objection to the submission of the conviction document. When the lawyer stated no objection, the immigration judge entered the document into evidence and found that the conviction record supported Cardenas-Alvarado's deportability.

Cardenas-Alvarado appealed the immigration judge's decision, arguing that the record did not establish that he was the same person whose name appeared on the conviction documents and that the record did not support the allegation, contained in the Order to Show Cause, that he had been convicted of possessing 2.4 pounds of marijuana. The BIA rejected Cardenas-Alvarado's arguments and affirmed the decision. It found that since there was no objection to admission of the conviction documents, Cardenas-Alvarado had failed to properly preserve for review any issue as to whether he was the same person that was convicted of possession of marijuana. The BIA also held that inclusion in the Order to Show Cause of the amount of marijuana for which Cardenas-Alvarado was convicted was a superfluous fact that did not prevent Cardenas-Alvarado from receiving proper notice of the charges against him.

Cardenas-Alvarado petitions this court for review of the BIA's decision, alleging that insufficient evidence supports his deportability because the name on the conviction record does not match his name. Cardenas-Alvarado does not specifically challenge the issue of the amount of marijuana he was convicted of possessing, but alleges that the variance is further evidence that he is not the same person represented in the record of conviction.

## II.

The government is required to establish deportability by "clear, unequivocal, and convincing evidence." Woodby v. INS, 385 U.S. 276, 277 (1966). "[W]e review the BIA's findings under the substantial evidence test, which requires only that the BIA's conclusion be based upon the evidence presented and that it be substantially reasonable." Chow v. INS, 12 F.3d 34, 37 (5th Cir. 1993).

The evidence in the record is sufficient to support the BIA's decision that Humberto Cardenas-Alvarado is Humberto A. Cardenas. Moreover, the transcript of the deportation proceeding indicates that while Cardenas-Alvarado's lawyer initially denied that Cardenas-Alvarado had been convicted, he did not object to admission of the record of conviction and even stated that he "perceived no avenue of relief from deportation at this time." Cf. United States v. Rodriguez, 195 F. Supp. 513, 515 (S.D. Tex. 1960) (in the absence of contrary testimony, identity of names is sufficient), aff'd, 292 F.2d 709, 710 (5th Cir. 1961) (no error

when attorney failed to object to admission of documents referred to as relating to defendant). The BIA did not unreasonably conclude that Cardenas-Alvarado failed to properly preserve the issue of identity because it was a matter that could have easily been presented to the immigration judge. Accordingly, the petition for review is DENIED.