

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

S)))))))))Q

No. 94-41020  
Summary Calendar  
S)))))))))Q

ANGEL ALVAREZ-AGUIRRE,

Petitioner,

versus

IMMIGRATION and NATURALIZATION  
SERVICE,

Respondent.

S)))))))))Q

Appeal from an Order of the  
Board of Immigration Appeals  
(A 35 906 231)

S)))))))))Q

March 24, 1995

Before GARWOOD, HIGGINBOTHAM and DAVIS, Circuit Judges.\*

PER CURIAM:

Petitioner Angel Alvarez-Aguirre (Alvarez) appeals the order of the Board of Immigration Appeals (BIA) affirming the order of the Immigration Judge (IJ) finding him deportable and, in the exercise of discretion, declining to grant him relief from deportation under 8 U.S.C. § 1182(c), § 212(c) of the Immigration and Nationality Act. We affirm.

---

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Alvarez does not question that he is deportable on account of his September 1992 federal conviction for conspiracy to possess with intent to distribute approximately sixty pounds of marihuana, for which he was sentenced to twenty-one months' imprisonment and three years' supervised release. His only complaint is of the denial of relief under section 212(c). The BIA and the IJ each recognized that Alvarez met the statutory threshold criteria to be eligible for discretionary relief under section 212(c). The BIA concluded, however, as did the IJ, that Alvarez did not merit favorable exercise of that discretion, on the basis of a weighing of the equities in favor of Alvarez against the matters of record adverse to him. We will affirm the BIA's decision to exercise its discretion to deny section 212(c) relief as long as the decision is not "arbitrary, irrational, or contrary to law." *Villarreal-San Miguel v. INS*, 975 F.2d 248, 250 (5th Cir. 1992). Here, it is apparent from the BIA's decision that it carefully and adequately considered the factors pro and con and rationally exercised its discretion. *Cf. Luciano-Vincente v. INS*, 786 F.2d 706, 708-09 (5th Cir. 1986).

Contrary to Alvarez's contention, we are unable to conclude that the BIA departed from its prior precedent. We similarly reject the contention that the BIA failed to conduct a *de novo* review of the record and to make its own decision, as opposed to merely deferring to that of the IJ. We note that the BIA expressly rejected the IJ's determination that Alvarez's equities were not

outstanding, so that a weighing was not required.<sup>1</sup> The BIA went on to address the equities and the negative factors and concluded that the former were not sufficient to overcome the latter. The BIA noted that the conviction in question was relatively recent (the conduct underlying it took place in November 1991), involved a substantial quantity of marihuana, and was not a spur of the moment action but rather one deliberately taken after mature consideration by Alvarez and his United States citizen wife. We note that this offense involved the attempted shipment of sixty pounds of marihuana from El Paso to New Orleans by air. The BIA and the IJ were both of the view that Alvarez's rehabilitation was, as the BIA said, "speculative" and it "lack[ed] confidence in his rehabilitative prospects." The BIA also noted, among other things, that Alvarez had come to this country from Juarez, Mexico, as an adult, that he and his wife and United States citizen children were in good health, that he was relatively young (under 40), that he could live in Juarez, Mexico, and that his wife and their children could live with him there and the children could continue in school in El Paso, none of which Alvarez disputes.

We are unable to conclude that the BIA abused its discretion in declining to grant Alvarez discretionary relief under section 212(c), or that it committed any error of law in its consideration of the case.

Accordingly, the decision of the BIA is

AFFIRMED.

---

<sup>1</sup> We note that the IJ went on, however, to, in the alternative, consider and weigh the equities in favor of Alvarez, as well as the adverse factors, and concluded on this basis also that he did not merit discretionary relief under section 212(c).