IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-41219
(Summary Calendar)

MULK RAJ DASS,

Petitioner,

versus

IMMIGRATION AND NATURALIZATION SERVICE,

Respondent.

Petition for Review of an Order of the Immigration and Naturalization Service

(A71 563 885)

(August 8, 1995)

Before DUHÉ, WIENER, and STEWART, Circuit Judges:

PER CURIAM*:

The Board of Immigration Appeals (BIA) affirmed the Immigration Judge's (IJ) denial of voluntary departure to Petitioner Mulk Raj Dass. Dass petitioned us for review, contending that although the IJ orally discussed and decided the

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

issue of voluntary departure, the IJ abused his discretion by not reproducing this discussion in his written decision. As Dass failed to raise this issue on appeal to the BIA, we have no jurisdiction to consider it and must dismiss the petition for review.

I.

FACTS

In May 1990, Dass, a native and citizen of India, entered the United States as a nonimmigrant visitor. In December 1991, Dass was charged in a four count indictment with devising and implementing a fraudulent scheme to obtain money and property by false pretenses.[1] According to the indictment, Dass fraudulently agreed to provide construction financing for an advance fee of $100,000.00. In September 1992, a jury convicted Dass on all four counts. He was sentenced to serve 21 months in prison and three years of supervised release. Dass appealed the conviction.

In March 1993, while in prison and during the pendency of his appeal, Dass received from the Immigration and Naturalization Service an order to show cause why he should not be deported. In November 1993, the IJ found that Dass was deportable as an overstay. Although Dass had not requested voluntary departure, the IJ sua sponte raised the issue and then denied it. The IJ did so based on Dass' conduct underlying his conviction, not on the conviction itself (as the conviction was not yet final). In

[1] See 18 U.S.C. § 2 (West 1969 & Supp. 1995); 18 U.S.C. § 1343 (West 1984 & Supp. 1995).

January 1994, the IJ issued a written decision, ordering Dass deported to India. This opinion did not address voluntary departure. In May 1994, the United States Court of Appeals for the Third Circuit affirmed Dass' conviction.[2]

Dass appealed the IJ's decision to the BIA, contending that the IJ committed various errors. In August 1994 (after Dass' conviction became final), the BIA affirmed the IJ's decision and dismissed Dass' appeal. In particular, the BIA found no error in the IJ's discretionary denial of voluntary departure.

II.

ANALYSIS

Dass now claims that the BIA abused its discretion by finding no error in the IJ's discretionary denial of voluntary departure. Essentially, Dass contends that although the IJ denied and explained the denial of voluntary departure during the deportation hearing, he abused his discretion by not including this discussion in the later written decision.

As an initial matter, we note that the IJ raised the issue of voluntary departure sua sponte. Dass never requested voluntary departure; nonetheless on appeal to the BIA, Dass challenged the denial of voluntary departure, arguing that the actions underlying his indictment were legally insufficient grounds to support such a denial. After reviewing Dass' brief to the BIA, however, we find no challenge to either the form or the manner in which the IJ

[2] United States v. Dass, 27 F.3d 559 (3rd Cir.), cert. denied, ___ U.S. ___, 115 S.Ct. 514, 130 L.Ed.2d 421 (1994).

rendered his decision.

We review the work of the BIA, not that of the IJ directly.[3] On petition to us, Dass may not for the first time introduce issues that he failed to raise at the BIA.[4] In his appeal to the BIA, Dass could have challenged either the form or the manner in which the IJ issued his decision. But, he did not. As a result, Dass' present objection to the form and manner of the IJ's decision is beyond the scope of this petition. We neither express nor imply an opinion on the merits of such a claim; we simply do not consider it. Instead, we dismiss Dass' petition to this court for lack of jurisdiction.

DISMISSED.

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[3] Ogbemudia v. I.N.S., 988 F.2d 595 (5th Cir. 1993); Castillo-Rodriguez v. I.N.S., 929 F.2d 181, 183 (5th Cir. 1991).

[4] Yahkpua v. I.N.S., 770 F.2d 1317, 1320 (5th Cir. 1985)("[I]f petitioner wishes to preserve an issue for appeal, he must first raise it in the proper administrative forum."); see also Carnejo-Molina v. I.N.S., 649 F.2d 1145, 1150-51 (5th Cir. 1981); Immigration & Nationality Act § 106(c), 8 U.S.C. § 1105a(c) (West 1970 & Supp. 1995).