

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 95-60156
Summary Calendar

ARTURO YANEZ-PENALOZA,

Petitioner,

versus

IMMIGRATION AND NATURALIZATION SERVICE,

Respondent.

- - - - -
Petition for Review of an Order
of the Board of Immigration Appeals
BIA No. A35-933-046
- - - - -

December 13, 1995

Before KING, SMITH and BENAVIDES, Circuit Judges.

PER CURIAM:*

Mexican citizen Arturo Yanez-Penalzoza appeals the Board of Immigration Appeals's (BIA) deportation order and its denial of his motion for reconsideration and to reopen his deportation proceedings seeking readjustment of status pursuant to 8 U.S.C. § 1255(i) (§ 245(i) of the Act) and 8 U.S.C. § 1182(c) (§ 212(c) of the Act). Yanez-Penalzoza argues that the Board erred in basing its deportation decision on evidence presented during the

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

relief stage of his proceedings. He also argues that the Board abused its discretion in denying his motion to reconsider or reopen by deciding that he was no longer eligible for § 212(c) relief after the final order of deportation.

This court does not have jurisdiction to review the underlying deportation order because the petition for review was not filed within 90 days. See 8 U.S.C. § 1105a(a)(1); Stone v. I.N.S., 115 S. Ct. 1537, 1542 (1995). Regarding the motion for reconsideration or to reopen, we have reviewed the record and the BIA's opinion and find no abuse of discretion. Accordingly, we deny the petition for review.

PETITION DISMISSED.