IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-4200
Summary Calendar

MOHAMMAD SHAFIQ CHAUDHRY,

Petitioner,

v.

IMMIGRATION AND NATURALIZATION SERVICE,

Respondent.

Petition for Review of an Order of the
Board of Immigration Appeals
(A34 751 948)

(December 9, 1992)

Before GARWOOD, JONES and EMILIO GARZA, Circuit Judges.[*]

PER CURIAM:

Appellant Chaudhry challenges on two grounds the Board of Immigration Appeals' decision refusing to grant him a waiver of inadmissibility pursuant to § 212(c) of the Immigration and Naturalization Act, 8 U.S.C. § 1182(c). He asserts that he was denied a fundamentally fair deportation hearing because of his counsel's ineffectiveness and that the Board abused its discretion

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

on the merits of his waiver claim. Finding no reversible error, we affirm.

Chaudhry's challenge to the effectiveness of his legal representation fails at the outset because, contrary to his argument, it was not error to concede deportability. Chaudhry does not contest that he was twice convicted for crimes--burglary of an auto and theft--committed within six months of each other. He contends, however, that these were not crimes of "moral turpitude" under the statute because he was not sentenced to prison on either charge and because the offenses were misdemeanors. These claims are incorrect. Petitioner was charged with deportability under a provision requiring only that he be convicted of two crimes of moral turpitude, not arising from a single scheme of misconduct, "whether or not [he was] confined therefor." 8 U.S.C. § 1251(a)(2)(A)(ii) (1990), formerly 8 U.S.C. § 1251(a)(4) (1952). This provision plainly requires only convictions and not incarceration to warrant deportability. Just as plainly, it does not distinguish between misdemeanors and felonies for purposes of determining moral turpitude.[1] Martinez-Montoya v. INS, 904 F.2d 1018 (5th Cir. 1990), which decided that a "deferred adjudication under Texas law is not a "conviction" under a related provision of the immigration laws is not to the contrary. Chaudhry's attorney

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[1] In his reply brief, Chaudhry seems to assert that a distinction between misdemeanor and felony convictions is inherent in the requirement of imprisonment for a period exceeding one year in § 1251(a)(2)(A)(i). Even in this were true, that provision in no way controls deportability under the "multiple criminal convictions," provision under which appellant was charged.

therefore made no mistake when he conceded deportability, and the proceeding was not fundamentally unfair.

With respect to the merits of his petition for waiver of deportability, we have construed our scope of appellate review to be exceedingly narrow, Ashby v. INS, 961 F.2d 555 (5th Cir. 1992). We do not overturn the Board's decision unless it represents an abuse of discretion and is arbitrary, irrational or contrary to law. Diaz-Rosendez v. INS, 960 F.2d 493, 495 (5th Cir. 1992). We see no reason to reverse the Board's decision denying relief to Chaudhry. The Board identified and balanced the equities using the proper legal standard. We agree with the Board on the relevance of Chaudhry's failure to testify in his own behalf regarding his rehabilitation, although this was simply one of a number of factors the Board considered. In any event, the Board's decision represented no abuse of discretion. **AFFIRMED**.