

April 26, 2004

Charles R. Fulbruge III
Clerk

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 03 - 60655
SUMMARY CALENDAR

RUPERTO GUTIERREZ-MORALES,

Petitioner,

v.

JOHN ASHCROFT, U.S. ATTORNEY GENERAL,

Respondent.

Petition for Review of an Order of the
Board of Immigration Appeals
BIA No. A91-283-466

Before REYNALDO G. GARZA, DAVIS, and BARKSDALE, Circuit Judges.

PER CURIAM:¹

In this appeal, we review the Board of Immigration Appeals' decision denying Ruperto Gutierrez-Morales' motion to reopen his removal proceedings and refusing to accept his untimely application for cancellation of removal.

Gutierrez-Morales argues that the Immigration Judge violated his due process rights by refusing to accept his untimely application for cancellation of removal and by denying his motion

¹Pursuant to 5th Cir. R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5th Cir. R. 47.5.4.

to reopen. Gutierrez-Morales also argues that the arrest which prompted his removal was illegal.

Gutierrez-Morales waived the opportunity to submit his application for cancellation of removal when he missed the imposed filing deadline. 8 C.F.R. § 3.31(c) (2003). His motion to reopen was properly denied because he was informed of his right to apply for cancellation of removal, and he was provided an opportunity to do so. 8 C.F.R. § 3.23(b)(3) (2002). Thus, the Immigration Judge did not violate Gutierrez-Morales' due process rights.

Gutierrez-Morales' challenge to his arrest does not warrant relief because even if he could demonstrate that his arrest was illegal, it would have no bearing on the validity of his subsequent removal. *I.N.S. v. Lopez-Mendoza*, 468 U.S. 1032, 1040 (1984).

Gutierrez-Morales' petition for review is therefore denied.