REVISED OCTOBER 21, 2010
IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit
FILED
October 30, 2009

Charles R. Fulbruge III
Clerk

No. 08-60874
Summary Calendar

HOPETON GEORGE SIMPSON

Petitioner

v.

ERIC H HOLDER, JR, U S ATTORNEY GENERAL

Respondent

Petition for Review of an Order of the
Board of Immigration Appeals
BIA No. A21 041 361

Before REAVLEY, GARZA, and HAYNES, Circuit Judges.

PER CURIAM:[*]

Hopeton George Simpson petitions this court to review the decision of the Board of Immigration Appeals (BIA) dismissing his appeal and affirming the immigration judge's (IJ) order that Simpson was ineligible for cancellation of removal pursuant to 8 U.S.C. § 1229b(a)(3) because he had committed an aggravated felony. Simpson, who has been convicted in state court of possession of controlled substances on more than one occasion since his admission to the

[*] Pursuant 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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.

United States, contends that none of his convictions constitutes an aggravated felony in its own right. He argues that he should not be deemed an aggravated felon based on his recidivism because he was not convicted of a recidivist offense in state court. Simpson also argues that the rule of lenity should be applied.

The BIA correctly determined that Simpson had committed an aggravated felony for immigration law purposes. *See Carachuri-Rosendo v. Holder*, 570 F.3d 263, 266-68 (5th Cir. 2009), *petition for cert. filed* (July 15, 2009) (No. 09-60). The rule of lenity is not applicable given this court's interpretation of the relevant statutory language. *Id.* at 268 n.7.

Simpson's petition for review is DENIED.