

FILED

October 29, 2003

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 02-60798
Summary Calendar

MOSES JAMES AMIEN,

Petitioner,

versus

JOHN ASHCROFT, U.S. ATTORNEY GENERAL,

Respondent.

Petition for Review of an Order of the
Board of Immigration Appeals
BIA No. A78 553 396

Before BARKSDALE, EMILIO M. GARZA, and DENNIS, Circuit Judges.

PER CURIAM:*

Moses James Amien requests review of the August 28, 2002, decision rendered by the Board of Immigration Appeals (BIA). The BIA denied Amien's motion for reconsideration of its decision dismissing his appeal as untimely. He argues that the 30-day appeal period runs from the date that he received the decision of the Immigration Judge (IJ) on October 17, 2001, and that his notice of appeal was timely filed on November 15, 2001, within 30 days of the date he received the decision. He also argues that the application of 8 C.F.R. § 1003.38(b), the regulation establishing the 30-day appeal period, violated his equal protection rights.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Because Amien did not file a petition for review within 30 days of the BIA's June 4, 2002, order which dismissed Amien's appeal as untimely, we do not have jurisdiction to review the BIA's June 4, 2002, order. See Karimian-Kaklaki v. INS, 997 F.2d 108, 111 (5th Cir. 1993).

Amien filed a petition for review within 30 days of the BIA's August 28, 2002, order denying his motion for reconsideration and, therefore, we have jurisdiction to review that order. See id. Amien has not shown that the BIA abused its discretion in denying his motion for reconsideration as untimely. Amien did not comply with the BIA's instructions to correct the defects in his filing within the 30-day appeal period pursuant to 8 C.F.R. § 1003.2(b)(2), and he did not file a motion requesting that the BIA accept his untimely motion by certification. Accordingly, Amien's petition for review is DENIED.

PETITION DENIED.