

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

March 29, 2019

Lyle W. Cayce
Clerk

No. 18-60169
Summary Calendar

GLORY ISOKEN EDOKPAYI,

Petitioner

v.

WILLIAM P. BARR, U. S. ATTORNEY GENERAL,

Respondent

Petition for Review of an Order of the
Board of Immigration Appeals
BIA No. A201 129 734

Before HIGGINBOTHAM, ELROD, and DUNCAN, Circuit Judges.

PER CURIAM:*

Glory Isoken Edokpayi, a native and citizen of Nigeria, has filed a petition for review of the decision of the Board of Immigration Appeals (BIA) affirming the denial of an immigrant visa petition (Form I-130) filed by her spouse, Nosakhare Edokpayi, a United States citizen, on her behalf. The respondent moves to dismiss the petition for lack of subject matter jurisdiction and, alternatively moves to transfer the case to the United States District

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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Court for the Northern District of Texas. The Government is correct that although determinations pertaining to I-130 petitions are not precluded from judicial review, this court lacks jurisdiction because the denial is not a final order of removal. *See, e.g., Ayanbadejo v. Chertoff*, 517 F.3d 273, 276 (5th Cir. 2008); 28 U.S.C. § 1291; *accord Ruiz v. Mukasey*, 552 F.3d 269, 274-75 & n.2 (2d Cir. 2009).

Because this court lacks jurisdiction, but the district court would have jurisdiction under *Ayanbadejo*, this case may be transferred to the appropriate district court in “the interest of justice” pursuant to 28 U.S.C. § 1631. A balancing of equities in this case weighs in favor of a transfer of the case to the district court because this court lacks jurisdiction, a refiled petition could be subject to dismissal as untimely, and there is no indication that the petitioner is acting in bad faith. *See, e.g., USPPS, Ltd. v. Avery Dennison Corp.*, 647 F.3d 274, 277 (5th Cir. 2011). The record reflects that Mr. Edokpayi is a resident of Dallas, Texas, and therefore, the most appropriate district court is the United States District Court for the Northern District of Texas. *See* 28 U.S.C. § 1391(e).

For the foregoing reasons, the respondent’s motion to dismiss is DENIED and the case is TRANSFERRED pursuant to § 1631 to the United States District Court for the Northern District of Texas.