

UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 92-4169  
Summary Calendar

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MICHAEL EDWIN AJAYI,

Petitioner,

versus

IMMIGRATION AND NATURALIZATION SERVICE,

Respondent.

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Petition for Review of an Order of the  
Immigration and Naturalization Service  
(A27 891 263)

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November 19, 1992

Before GARWOOD, JONES, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:\*

The Board of Immigration Appeals affirmed an immigration judge's finding that appellant Ajayi was deportable because he had failed to maintain his student status as required by his visa. Ajayi admitted during the immigration hearing that he was no longer attending an institution of higher learning. Hence he admitted his deportability pursuant to 8 U.S.C. § 1251(a)(1)(C)(i). Ajayi appeals, contending that this decision lacks substantial evidence

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

in support and that numerous procedural and constitutional errors were committed in the course of the INS proceedings. We affirm in part and vacate and remand in part.

Because Ajayi admitted that he was no longer a student at the time of his deportation hearing, and that he had been admitted to the United States on a student visa, he essentially conceded this ground of deportability. There is no support for his apparent contentions that his marriage in February 1990 or incarceration shortly before the deportation hearing somehow mitigated his failure to comply with the visa requirement. Further, it is no use to complain that the immigration judge incorrectly referred to his conviction record as another ground for deportation, even after INS had withdrawn that basis for its order to show cause. The BIA, whose decision we review, corrected this error.

Ajayi also asserts numerous procedural deficiencies in his deportation proceedings. Contrary to the statement at page 16 of INS's brief, it appears that Ajayi did timely submit a legal brief to the BIA on appeal outlining his procedural arguments. A copy of the brief is attached to Ajayi's reply brief in this court, and although no date stamp has been furnished, its certificate of service indicates that it would have been filed timely with BIA. We note that while the brief contains the administrative case number pertinent to Ajayi's deportation proceeding, it relates both to the bond and deportation issues. The Board's decision made no reference to this brief, other than to state generally that documents concerning Ajayi's appeal of the deportation order and of

his bond determination proceeding were improperly mixed in the administrative record. The Board then ignored the arguments made in Ajayi's brief, an oversight that has led INS to argue in this court that Ajayi waived most or all of the procedural points he now asserts. See, e.g., INS brief pages 24-25.

The administrative record before us is inadequate to determine whether Ajayi actually filed an appellate brief with the BIA, whether he filed it timely, and whether BIA deliberately or accidentally overlooked the arguments made in his brief. In a somewhat similar context, we held that the Board abused its discretion by inadequately reviewing the appellate points presented by a petitioner. Medrano-Villatoro v. INS, 866 F.2d 132, 134 (5th Cir. 1989). While Ajayi's specific points of error brought before the Board may have been too vague to support adequate administrative review, his brief attempted to explain in further detail the basis of his claim of constitutional, statutory and regulatory violations. See Townsend v. INS, 799 F.2d 179, 182 (5th Cir. 1986). The Board abused its discretion in this case if it declined to consider Ajayi's pro se brief solely because it inartfully included arguments directed at his bond as well as deportation proceedings. The proper administrative response would have been to treat the deportation arguments in Ajayi's deportation appeal and the bond arguments in any appeal he had filed regarding the bond determination.

Given the uncertain state of the record, we cannot say whether the Board abused its discretion in this way. We leave it

to the Board to reconsider its administrative record on remand and, if appropriate, to review on the merits Ajayi's procedural claims.

For the foregoing reasons, the decision of the BIA is affirmed in part, but vacated and remanded in part for further proceedings in accordance with this opinion. AFFIRMED in part, VACATED and REMANDED in part.