

UNITED STATES COURT OF APPEALS  
FIFTH CIRCUIT

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No. 92-4479

(Summary Calendar)

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FRANCIS N. NENGHABI,

Petitioner,

VERSUS

IMMIGRATION AND NATURALIZATION SERVICE,

Respondent.

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Petition for Review of an Order  
of the Board of Immigration Appeals  
(A27 592 548)

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(February 3, 1993)

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

PER CURIAM:\*

Francis N. Nenghabi, proceeding pro se, appeals a decision by the Board of Immigration Appeals ("the BIA"), dismissing Nenghabi's appeal of an order of deportation. Nenghabi, a native and citizen of Cameroon, was admitted into the United States as a nonimmigrant student authorized to attend the University of Minnesota.<sup>1</sup> In

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\* Local Rule 47.5.1 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

<sup>1</sup> Section 101(a)(15)(F)(i) of the Immigration and Nationality Act defines a nonimmigrant to include:

December 1991, an Order to Show Cause was issued charging Nenghabi with deportability under section 241(a)(1)(C)(i) of the Immigration and Nationality Act,<sup>2</sup> as an alien who after being admitted as a student, had not attended classes since May 24, 1990.<sup>3</sup>

Based upon Nenghabi's own testimony before the immigration judge, and the evidence submitted by the government, the immigration judge found that Nenghabi's deportability had been established by clear, unequivocal, and convincing evidence. On appeal, the BIA affirmed the immigration judge's decision.

Nenghabi contests the BIA's decision, arguing that it was not based on substantial evidence. We review a deportability determination for substantial evidence. See *Hernandez-Garza v. I.N.S.*, 882 F.2d 945, 947 (5th Cir. 1989). "The substantial evidence standard require only that the Board's conclusion be based upon the evidence presented and be substantially reasonable." *Rojas v. I.N.S.*, 937 F.2d 186, 189 (5th Cir. 1991).

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an alien having a residence in a foreign country which he has no intention of abandoning, who is a bona fide student qualified to pursue a full course of study and who seeks to enter the United States temporarily and solely for the purpose of pursuing such a course of study at any established college, university . . . , which institution or place of study shall have agreed to report to the Attorney General the termination of attendance of each nonimmigrant student.

8 U.S.C. § 1101(a)(1)(15)(F)(i) (West Supp. 1992).

<sup>2</sup> See 8 U.S.C. § 1251(A)(1) (1988).

<sup>3</sup> "Any alien who is admitted as a nonimmigrant and who has failed to maintain the nonimmigrant status in which the alien was admitted . . . is deportable." 8 U.S.C. § 1251(a)(1)(C)(i).

Nenghabi's testimony before the immigration judge, together with the evidence submitted by the government, constituted substantial evidence of deportability. As a nonimmigrant student, Nenghabi was subject to being deported if he failed to maintain his student status. See 8 U.S.C. § 1251(a)(1)(C)(i). Nenghabi testified before the immigration judge that he last attended classes in May 1990, and that he last registered for classes during the 1990 spring quarter. See Record on Appeal at 45-46. The government offered as evidence a copy of a letter from the University of Minnesota's registrar and a copy of Nenghabi's transcript, indicating that Nenghabi had not registered for any classes after the 1990 spring quarter. See Record on Appeal at 43, 52-54. Thus, substantial evidence supports the BIA's conclusion that Nenghabi was deportable.<sup>4</sup>

For the foregoing reasons, we **AFFIRM**.

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<sup>4</sup> Nenghabi does not dispute that he stopped attending classes after the 1990 spring quarter. See Brief for Nenghabi at 2. Rather, he maintains that he was not able to attend school because of a criminal conviction. Nenghabi argues that because his conviction is pending appeal, and is not final, his deportability is not supported by substantial evidence. We strongly disagree. Nenghabi's deportability determination rested on his failure to maintain his student status, and not his criminal conviction. See Record on Appeal at 3-4. Thus, Nenghabi's criminal conviction is not relevant.

Nenghabi also argues that he is entitled to a withholding of deportation because of his alleged fear of persecution in Cameroon. See Brief for Nenghabi at 5. Because Nenghabi did not raise this issue at his deportation hearing, the BIA did not review the issue. See Record on Appeal at 4. Consequently, we cannot review the issue on appeal. See *Varnado v. Lynaugh*, 920 F.2d 320, 321 (5th Cir. 1991) (declining to review issues raised for the first time on appeal).