

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-4885
Summary Calendar

ADETUNJI POPOOLA,

Petitioner,

versus

IMMIGRATION AND NATURALIZATION
SERVICE,

Respondent.

Petition for Review of an Order of the
Immigration and Naturalization Service
(A28 890 797)

(June 7, 1993)

Before POLITZ, Chief Judge, KING and BARKSDALE, Circuit Judges.

PER CURIAM:*

Having overstayed his visitor's visa by 11 years, Adetunji Popoola, a Nigerian national, conceded deportability. The immigration judge denied Popoola's applications for asylum, withholding of deportation, and suspension of deportation but

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

granted a voluntary departure. Popoola appealed to the Board of Immigration Appeals. Instead of paying the \$110 filing fee, Popoola filed a statement with his brief requesting waiver, claiming inability to pay. The BIA declined to waive the fee and summarily dismissed his appeal. Popoola timely petitioned for review. We deny review and affirm.

The sole issue before us is the dismissal of Popoola's appeal for failure to pay the required filing fee. We may not reach the merits because Popoola failed to perfect his appeal to the BIA and therefore did not exhaust his administrative remedies.¹

Under 8 C.F.R. § 3.3(b), a party appealing to the BIA is required to pay a filing fee with his notice of appeal. If the appellant is unable to pay the fee, he must file with his notice of appeal an affidavit or an unsworn declaration complying with the requirements of 28 U.S.C. § 1746. That document must "establish his or her inability to pay the required fee" ² As the BIA instructed in **Matter of Lopez**,³ appellants must disclose sufficient details so that the BIA may properly assess the claim of poverty. Whether the appeal may proceed without payment of the fee is a

¹ 8 U.S.C. § 1105a(c); **Townsend v. INS**, 799 F.2d 179 (5th Cir. 1986).

² 8 C.R.F. § 3.3(b).

³ 14 I&N Dec. 424 (BIA 1973).

matter entrusted to the BIA's discretion.⁴

The BIA determined that Popoola's request for a waiver failed to establish his inability to pay the fee. Popoola offered only the conclusionary statement "I have not the money with which to pay my appeal/application fee." The BIA refused to credit this bare assertion in the face of Popoola's hearing testimony that he had \$600 in the bank. We also note that in seeking voluntary departure Popoola represented that he could readily obtain funds to pay his passage out of the United States, presumably to Belgium, his country of choice, or Nigeria, his country of origin. The BIA's refusal to waive the filing fee is supported by the evidence and is well within its discretionary authority.

Petition for review DENIED.

⁴ 8 C.F.R. § 3.3(b).