

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 93-5373  
Conference Calendar

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MATEO SALAS,

Plaintiff-Appellant,

versus

JAMES A. COLLINS, Director, ET AL.,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Eastern District of Texas  
USDC No. 6:92-CV-725  
- - - - -

(May 18, 1994)

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

BY THE COURT:

Mateo Salas seeks leave to appeal in forma pauperis (IFP). This Court must examine the basis of its jurisdiction on its own motion if necessary. Tijerina v. Plentl, 984 F.2d 148, 150 (5th Cir. 1993).

Salas filed his motion for an out-of-time appeal almost four months after the district court entered final judgment in his action. Fed. R. App. P. 4(a)(1) provides that a notice of appeal in a civil case "must be filed . . . within 30 days after the date of entry of the judgment or order appealed from." A district court, upon a showing of excusable neglect or good cause, may extend the time for filing a notice of appeal upon motion filed not later than 30 days after the expiration of the time prescribed by Rule 4(a). Fed. R. App. P. 4(a)(5).

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Even if Salas' motion for an out-of-time appeal was construed as a Rule 4(a)(5) motion for an extension of time to file his appeal, such a motion was filed outside of the prescribed time limit. See Fed. R. App. P. 4(a)(5). Therefore, the district court could not have properly granted an out-of-time appeal under Rule 4(a)(5).

Because this Court lacks jurisdiction over the appeal, Salas's motion to proceed IFP is DENIED and the appeal is DISMISSED. 5th Cir. Rule 42.2.