

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-5419
Summary Calendar

MICHAEL EDWIN AJAYI,

Petitioner,

versus

IMMIGRATION AND NATURALIZATION
SERVICE,

Respondent.

Petition for Review of An Order of the
Immigration and Naturalization Service

(A27-891-263)

(August 3, 1994)

Before POLITZ, Chief Judge, DAVIS and DUHÉ, Circuit Judges.

PER CURIAM:*

Michael Edwin Ajayi seeks review of the denial of his motion to reopen deportation proceedings. A Nigerian national admitted to the United States as a student, Ajayi was ordered deported for violating the conditions of his student status. After remanding

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

for consideration of Ajayi's myriad procedural objections, all were rejected by the Board of Immigration Appeals. We denied a petition for review, thus affirming the deportation order.¹

While the petition for review was pending Ajayi filed a motion to reopen the proceedings. The BIA denied the motion, finding that the issues raised should have been presented at his deportation hearing or in his appeal of the deportation order. Ajayi timely petitioned for review.

The regulations of the BIA direct denial of a motion to reopen unless it appears to the Board that evidence sought to be offered is material and was not available and could not have been discovered or presented at the former hearing²

We review the BIA's denial of a motion to reopen for abuse of discretion.³

In his motion to reopen Ajayi raises two issues. First he contends that the superseding Order to Show Cause was invalid because the signature of the district director was falsified. Second he maintains that the INS improperly transferred his case from Oklahoma City, Oklahoma, where he previously had attended school, to Oakdale, Louisiana, where he was detained on federal criminal charges. Rather than filing a superseding Order to Show Cause, Ajayi contends that the INS should have filed a motion for change of venue. We agree with the BIA that these issues could and

¹**Ajayi v. INS**, No. 93-4164 (Nov. 18, 1993) (unpublished).

²8 C.F.R. § 3.2; see also **Ogbemudia v. INS**, 988 F.2d 595 (5th Cir. 1993).

³**INS v. Abudu**, 485 U.S. 94 (1988); **Ogbemudia**.

should have been raised earlier. The superseding Order to Show Cause was served on Ajayi on July 25, 1991⁴ and Ajayi was notified timely that his hearing would be held in Oakdale. At that time, Ajayi had sufficient information to challenge venue and indeed he did so at his hearing and on appeal. He also had in hand the district director's signature on the superseding Order to Show Cause and access to the same kind of evidence he presents now -- documents signed by the district director in proceedings against others confined at the Oakdale facility. The denial of the motion to reopen was not an abuse of discretion.

The petition for review is DENIED and the order of the BIA denying the motion to reopen is AFFIRMED.

⁴**In re Ajayi**, No. A27 891 263 (BIA Feb. 10, 1993) at 4.