UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 93-5566
Summary Calendar

CHUKWUDI OTUSI,

Petitioner,

versus

IMMIGRATION AND NATURALIZATION
SERVICE,

Respondent.

Petition for Review of an Order of the
Immigration and Naturalization Service
(INS No. A29-574-074)
(May 30, 1994)

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

POLITZ, Chief Judge:[*]

Chukwudi Otusi, a citizen of Nigeria ordered deported by the
Immigration and Naturalization Service, petitions for review of
adverse rulings by the Board of Immigration Appeals. The petition
is denied.

---

[*]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should not be published.

Following a deportation hearing, the Immigration Judge determined on March 30, 1993 that Otusi, who had overstayed his visa and had admittedly cheated on his taxes, was not of sufficient moral character to be given an adjustment of status to that of permanent resident[1] or a section 212(i) waiver[2] and was ordered deported.[3] On April 9, 1993, the deadline for appealing the deportation order,[4] a "motion to reopen and reconsider" was filed by Otusi's wife, Sindiswa Almaz Otusi. The IJ denied the motion, explaining that Otusi's amendment of his previously incorrect tax returns did not obviate the cheating and that Otusi's wife lacked standing to move to reopen.

Otusi appealed to the BIA, contesting both the original deportation order and the denial of the motion to reopen. The BIA ruled that the appeal of the original deportation order was untimely, being filed more than ten days after the order, and it dismissed the appeal from the denial of the motion to reopen because Otusi's wife lacked standing. Otusi timely petitioned this court for review.

---

[1]8 U.S.C. § 1255.

[2]See 8 U.S.C. § 1182(i) (alien spouse of United States citizen who is excludable for fraud, misrepresentation or perjury may nonetheless be admitted at the government's discretion).

[3]See 8 U.S.C. § 1251(a)(1).

[4]8 C.F.R. §§ 242.21 (appeal must be filed within ten days after IJ decision).

<u>Analysis</u>

Otusi first claims error in the determination that his appeal from the deportation order was untimely. Generally, appeals to the BIA "shall be taken within 10 days after the mailing of a written decision, or the stating of an oral decision . . .; failure to do so may constitute a ground for dismissal of the appeal by the Board."[5] INS regulations contain no tolling provision, however, and specifically state that "[t]he filing of a motion [to reopen] with an immigration judge shall not serve to stay the execution of an outstanding decision."[6] In light of this language, and given our deference to an agency's interpretations of statutes and regulations within its ambit,[7] we conclude that the BIA appropriately dismissed Otusi's appeal of the deportation order as time-barred.

As to the dismissal of the appeal from the denial of the motion to reopen, Otusi urges two points of error. He contends that the BIA abused its discretion by failing to certify the appeal *sua sponte* based on the ineffectiveness of previous counsel.[8] He further contends that the BIA erred by failing to construe the motion to reopen as his motion rather than his wife's. Exhaustion

---

[5]8 C.F.R. § 242.21.

[6]8 C.F.R. § 242.22.

[7]<u>See</u>, <u>e.g.</u>, **Metro County Title, Inc. v. F.D.I.C.**, 13 F.3d 883 (5th Cir. 1994).

[8]Certification is a purely discretionary decision for the BIA, 8 C.F.R. § 3.1(c), and, even were we to reach the merits of this claim, we would be hard pressed to find an abuse of that discretion.

of administrative remedies is jurisdictional;[9] Otusi presented neither contention to the BIA. We are thus without power to hear these assignments of error.

The petition for review is DENIED.

---

[9]**Yahkpua v. INS**, 770 F.2d 1317 (5th Cir. 1994).