

UNITED STATES COURT OF APPEALS  
for the Fifth Circuit

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No. 94-40725  
Summary Calendar

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THANOMSAMPHANHN DOUANGSAVANH and LITHAVY DOUANGSAVANH,  
Petitioner,

VERSUS

IMMIGRATION AND NATURALIZATION SERVICE,  
Respondent.

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On Appeal from the United States  
Immigration and Naturalization Service  
(A70 527 022 & A70 527 023)

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March 20, 1995

Before DUHÉ, WIENER, and STEWART, Circuit Judges.

PER CURIAM:<sup>1</sup>

Appellants, Thanomsamphanhn Douangsavanh and Lithavy Douangsavanh, natives and citizens of Laos, appeal the Board of Immigration Appeals dismissal of their appeals from the adverse deportation decision of the Immigration Judge. We affirm.

In deportation proceedings Appellants admitted their deportability and applied for asylum. Following a hearing, the Immigration Judge found them deportable and denied their requests

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<sup>1</sup> 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.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 asylum. The Immigration Judge advised Appellants, and their then counsel, that any appeal would have to be filed by January 18, 1994 on the prescribed form, and that late filed appeal notices are ineffective. The prescribed notices were not filed until January 28th. The Board of Immigration Appeals dismissed the appeals as untimely.

Appellants, now represented by different counsel, argue in this Court that the notices were motions to reopen their cases (not affected by the time limits of 8 CFR §§ 3.3(a) and 3.38(b)) and not notices of appeal. We are not persuaded.

Both filings are on form EOIR-26, which is entitled in bold print "Notice of Appeal to the Board of Immigration Appeals of Decision of Immigration Judge". References to appeal abound throughout the document and the instructions for its completion which accompany it. In the typewritten section stating "reasons for this appeal" one Appellant's notice states:

"Mr. Douangsavanh is requesting to appeal his case for the reason that his father has applied for an I730 for him and his mother and brother. He request [sic] that he could remain in the states while that decision is been [sic] taken."

The other states:

"Mr. Douangsavanh is requesting to reopen his case because his father has applied for an I730 for him, his mother and brother. He is requesting that he remain in the states while this decision is been [sic] taken."

The quoted language, taken in the context of the form in which it appears and the printed language of that form, is insufficient

to constitute a motion to reopen and is an untimely notice of appeal.

AFFIRMED.