

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 94-50126  
Summary Calendar

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JOHN ONORME AGBI,

Petitioner-Appellant,

VERSUS

IMMIGRATION AND NATURALIZATION SERVICE,

Respondent-Appellee.

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Appeal from the United States District Court  
for the Western District of Texas  
(EP-93-CV-406)

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(August 3, 1994)

Before SMITH, EMILIO M. GARZA, and PARKER, Circuit Judges.

PER CURIAM:\*

John Agbi appeals the dismissal of his alien detainee's petition for writ of habeas corpus. We dismiss the appeal as frivolous.

I.

Upon his release from state prison, Agbi was arrested and

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\* Local Rule 47.5.1 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 Pursuant to that rule, the court has determined that this opinion should not be published.

placed in the custody of the Immigration and Naturalization Service (INS) without bond, pending a deportation proceeding. On four occasions, he requested a redetermination of the decision to detain him without bond. In the interim, an immigration judge (IJ) held a deportation hearing and found Agbi deportable. The Board of Immigration Appeals (BIA) affirmed the deportation order, and Agbi filed an appeal in this court.

For unknown reasons, Agbi did not receive a custody hearing during the six-month period before his deportation order became administratively final. On September 9, 1993, Agbi renewed his motion for a redetermination of bond. In addressing the motion, the IJ concluded that he no longer had jurisdiction under 8 C.F.R. § 242.2(d) to consider a request for change in custody status because the deportation order had become administratively final. The BIA affirmed this decision.

The matter was called to the attention of the district director of the INS in El Paso. After considering Agbi's ties to the United States, Agbi's significant criminal record, and the procedural posture of the deportation proceedings against Agbi, the district director decided that Agbi could be released from custody if he posted a bond of \$25,000. Agbi appealed that decision to the BIA, which found that the district director's determination was appropriate and reasonable.

Prior to the district director's decision to set bond at \$25,000, Agbi filed a habeas petition in the district court alleging that (1) he was denied due process and subjected to

"additional punishment" through his confinement without bond by the INS; (2) he was deprived of an opportunity to be released on bond as a result of INS's refusal to make a timely determination of his eligibility; and (3) the IJ's decision not to hold a bond hearing before the "order of deportation became administratively final amounted to an arbitrary, capricious, and disparate dispensation of discretionary authority to separate classes of aliens."

The INS filed a motion to dismiss as moot, arguing that "[p]etitioner has received the only relief he has requested, a custody redetermination and a bond." The magistrate judge determined that Agbi had filed no response to the motion to dismiss and recommended that the district court grant the motion.

Agbi objected to the magistrate judge's report, asserting that he had responded to the motion to dismiss. The district court found that Agbi's response was untimely but reviewed the response "in the interest of justice." Succinctly, the district court framed Agbi's argument in the response as a challenge to the amount of the bond and held that, under 8 C.F.R. § 3.1(b)(7), an appeal concerning the amount of the bond must be presented to the BIA. The magistrate judge's report and recommendation were adopted, and the petition was dismissed as moot.

## II.

Agbi argues that the district court erred in dismissing his habeas petition as moot based upon a finding that he received the relief he requested. He argues that his detention without bond at

the time of his arrest was an abuse of discretion and a violation of due process and that it caused him pain and additional punishment. Moreover, he contends that he suffered prejudice because his confinement made him unable to demonstrate his rehabilitation as a favorable factor at his deportation hearing.<sup>1</sup> He seeks review of the allegations concerning the IJ's failure to hold a bond hearing. Agbi also challenges the "excessively high" bond in the amount of \$25,000 set by the district director. He requests that the court made an independent determination to reduce the bond to \$5,000 or, alternatively, to remand the case to the district court for a reduction.

This court "may not decide an appeal if the subject thereof has become moot." Quezada v. INS, 898 F.2d 474, 475 (5th Cir. 1990). Agbi filed his habeas petition challenging his confinement without bond and seeking a custody hearing before the district director set his bond. When the district director set bond at \$25,000, Agbi received the relief he requested, and the subject became moot.

Agbi's argument that he has suffered prejudice because he was unable to establish his rehabilitation because of his confinement is inapposite. The arguments are appropriate in a challenge to his deportation order, which is not presently before this court.<sup>2</sup> As

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<sup>1</sup> The BIA found that Agbi had not made a sufficient showing on the rehabilitation issue. This conclusion was based upon "the severity of [Agbi's] criminal history, his disclaimers concerning his criminal misbehavior, and his continued confinement as of the final hearing date."

<sup>2</sup> On his petition for review of the BIA's dismissal of the appeal of his deportation order, this court remanded on the government's motion. Agbi v. INS, No. 93-5320 (5th Cir. Mar. 14, 1994) (unpublished).

to Agbi's request that his bond be reduced, this court is without jurisdiction to address this issue. See Emejulu v. INS, 989 F.2d 771, 771 (5th Cir. 1993) (citing Young v. United States Dep't of Justice, INS, 759 F.2d 450, 457 (5th Cir. 1985)).

The appeal is frivolous. Accordingly, it is DISMISSED pursuant to 5TH CIR. R. 42.2.