

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

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No. 92-5160
S)))))))))Q

AUSTEN P.I. OJEHANON,

Petitioner,

versus

IMMIGRATION AND NATURALIZATION SERVICE,

Respondent.

S)))))))))Q

Petition for Review of an Order of the
Immigration and Naturalization Service
(A26 094 374)

S)))))))))Q
(March 9, 1994)

Before GARWOOD and JOLLY, Circuit Judges, and DUPLANTIER,* District Judge.

PER CURIAM:**

Respondent, Immigration and Naturalization Service (INS), has moved to dismiss the petition for review of petitioner, Austen P.I. Ojehanon (Ojehanon), seeking to review the decision of the Board of

* District Judge of the Eastern District of Louisiana, sitting by designation.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Immigration Appeals (BIA), which dismissed his appeal from the immigration judge's August 1992 order that he be deported. The basis of the motion is that on December 14, 1993, Ojehanon's deportation was effectuated by the INS's returning him to Nigeria. We grant the motion to dismiss.

Ojehanon, a native and citizen of Nigeria, was ordered deported by the immigration judge, having been found deportable under 8 U.S.C. § 1251(a)(2)(B)(i) (conviction of controlled substance violation) and 8 U.S.C. § 1251(a)(2)(A)(iii) (conviction of an aggravated felony) based on his July 13, 1990, conviction in the United States District Court for the Eastern District of New York of importing heroin into the United States. Ojehanon was represented by counsel in the proceedings before the immigration judge. Ojehanon appealed the order of the immigration judge to the BIA, and on this appeal Ojehanon was *pro se*. In an order issued October 28, 1992, the BIA found no merit in Ojehanon's contentions on appeal and ordered the appeal dismissed. On November 16, 1992, Ojehanon, *pro se*, filed a petition of review of the BIA's decision with this Court.

Because of Ojehanon's status as an aggravated felon, his petition for review did not of itself operate to stay the order of deportation. 8 U.S.C. § 1105a(a)(3). It is not disputed that petitioner is a native and citizen of Nigeria, is not a citizen of the United States, and is an aggravated felon.

On March 17, 1993, the INS sent Ojehanon and this Court its written notice of its intention to enforce the order of deportation

of Ojehanon. This notice was received by this Court's clerk's office on March 19, 1993, and on that date this Court wrote counsel for the INS acknowledging receipt of the notice of intention to enforce deportation order, and advising that Ojehanon had not filed with this Court a motion for stay of deportation; a copy of this letter from this Court's clerk's office was sent to Ojehanon. It is evident that Ojehanon received this March 19, 1993, letter from the clerk's office because a copy of it is attached to Ojehanon's response to the INS's brief, which response was filed in this Court on May 19, 1993. On March 31, 1993, Ojehanon filed with this Court his motion for stay of deportation. That motion was denied by order of this Court dated April 1, 1993. The INS has now advised that it was unable to deport Ojehanon at that time because the Nigerian embassy refused to issue the necessary travel documents. Briefs were filed by the INS and Ojehanon *pro se* in May 1993. On June 18, 1993, this Court appointed counsel to represent Ojehanon, and on August 6, 1993, Ojehanon's appointed counsel filed a brief on his behalf with this Court. On September 30, 1993, the INS filed its supplemental brief, in response to the referenced brief filed by Ojehanon's counsel.

On November 29, 1993, Ojehanon, through counsel, filed a motion for expedited reconsideration of this Court's April 1, 1993, denial of Ojehanon's request for stay of deportation. On December 10, 1993, this Court issued its order stating in its entirety: "IT IS ORDERED that petitioner's motion for expedited reconsideration of the Court's order of April 1, 1993 denying stay of deportation

is GRANTED." This order was not received by the INS until December 16, 1993. In the meantime, Ojehanon had been involuntarily deported on December 14, 1993. On December 20, 1993, Ojehanon, through counsel, filed a motion for clarification of this Court's December 10, 1993, order; and on December 28, 1993, this Court issued its order clarifying the December 10, 1993, order and expressly granting Ojehanon a stay of deportation. At that time, this Court was unaware that Ojehanon had already been deported.

Under 8 U.S.C. § 1105a(c), we have no jurisdiction to review an order of deportation if the alien "has departed from the United States after issuance of the order." See *Quezada v. INS*, 898 F.2d 474, 476-77 (5th Cir. 1990); *Umanzor v. Lambert*, 782 F.2d 1299, 1302-1303 (5th Cir. 1986). Nor do we see anything illegal in the INS's effectuating Ojehanon's deportation. As an aggravated felon, Ojehanon was not entitled to an automatic stay of deportation. Several months after the petition for review was filed, the INS notified this Court and Ojehanon in writing of its intent to effectuate his deportation. Ojehanon then moved for a stay of deportation, which this Court denied. Ojehanon was not deported until months later, when satisfactory arrangements could be made. Although the departure was effected after our December 10, 1993, order, that order was not received by the INS until after Ojehanon had been deported, and in any event, as Ojehanon's counsel recognized, the December 10 order did not purport to stay Ojehanon's deportation. Even if we were not bound by *Quezada* and *Umanzor*, which we plainly are, we do not find the effectuation of

Ojehanon's deportation to have been illegal or improper.

The petition for review is accordingly dismissed for want of jurisdiction.

DISMISSED