

UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 93-5583  
Summary Calendar

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ADEMOLA MICHAEL OGUNLEYE,

Plaintiff-Appellant,

versus

WARDEN F D C OAKDALE,

Defendant-Appellee.

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Appeal from the United States District Court  
For the Western District of Louisiana  
(92-CV-0003, L.C. Sec. P)

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( April 21, 1994 )

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

PER CURIAM:\*

Ademola Michael Ogunleye appeals the dismissal of his petition for writ of habeas corpus for lack of jurisdiction. We affirm.

Background

Ogunleye, a Nigerian citizen, was convicted of a felony by an Oklahoma state court and deported in 1985. He reentered the United

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

States in 1986, misrepresenting his identity to avoid exclusion.<sup>1</sup> His true identity was discovered, however, and an immigration judge ordered his deportation based on the misrepresentation.<sup>2</sup> The order of deportation was upheld on appeal by the Board of Immigration Appeals and by this court.<sup>3</sup>

While in custody awaiting deportation Ogunleye filed a petition for writ of habeas corpus challenging his Oklahoma conviction which he thought to be the basis of his deportability. Determining that he had been denied such relief by the federal district court in Oklahoma and by our colleagues in the Tenth Circuit,<sup>4</sup> the court *a` quo* directed Ogunleye to explain how his current petition differed from the earlier petition. Upon receipt of that explanation the court rejected some of Ogunleye's claims as successive and denied others on the merits.<sup>5</sup> Ogunleye appealed and we vacated in part<sup>6</sup> and remanded for a determination whether the

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<sup>1</sup>As a convicted felon, Ogunleye was excludable under 8 U.S.C. §§ 1182(a)(2) and (6).

<sup>2</sup>See 8 U.S.C. § 1251(a)(1)(A); 8 U.S.C. § 1182(a)(6)(C).

<sup>3</sup>**Ogunleye v. I.N.S.**, No. 90-4758 (5th Cir. July 15, 1991) (unpublished). We also affirmed the BIA's denial of his motion to reopen. **Ogunleye v. I.N.S.**, No. 92-4393 (5th Cir. August 27, 1993) (unpublished).

<sup>4</sup>**Ogunleye v. I.N.S.**, 940 F.2d 671 (10th Cir. 1991), cert. denied, 112 S.Ct. 899 (1992).

<sup>5</sup>Ogunleye also challenged the I.N.S.'s refusal to waive the filing fee required by 8 U.S.C. § 1255a(c)(7) for adjustment of status. The district court properly determined that Ogunleye's status as a convicted felon foreclosed such relief. See 8 U.S.C. § 1255a(a)(4).

<sup>6</sup>**Ogunleye v. Warden, F.D.C., Oakdale**, No. 92-4907 (5th Cir. September 2, 1993) (unpublished). The court affirmed with regard

current incarceration satisfied the "in custody" requirement of 28 U.S.C. § 2254.<sup>7</sup> Before the court could address the remand Ogunleye was deported. He did not seek a stay of deportation from the District Director of the I.N.S.<sup>8</sup> The district court therefore dismissed the petition on the grounds that the deportation voided the court's jurisdiction. Ogunleye timely appeals the dismissal and also seeks a retraction of the deportation and a restoration into I.N.S. custody.

#### Analysis

Ogunleye's appeal is governed by **Umanzor v. Lambert**.<sup>9</sup> In **Umanzor**, we held that the legislative mandate of 8 U.S.C. 1105(a)(c) is clear and unequivocal: "An order of deportation . . . shall not be reviewed by any court if the alien . . . has departed from the United States after issuance of the order."<sup>10</sup> We explained:

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to the application for adjustment of status.

<sup>7</sup>The petitioner's custody must bear some nexus to the conviction under attack. **Maleng v. Cook**, 490 U.S. 488 (1989); **Willis v. Collins**, 989 F.2d 187 (5th Cir. 1993). Ogunleye's in custody status stemmed from his illegal entry into the United States, not the felony conviction in Oklahoma.

<sup>8</sup>See 8 C.F.R. § 243.4. Ogunleye filed an emergency motion to enjoin deportation. The district court explained that the proper avenue for obtaining the stay was through the District Director. We rejected Ogunleye's appeal for lack of jurisdiction because the decision of the district court was interlocutory. **Ogunleye v. Guzik, Warden, F.D.C., Oakdale, La.**, No. 93-1070 (5th Cir. November 17, 1993) (unpublished).

<sup>9</sup>782 F.2d 1299 (5th Cir. 1986); see also **Quezada v. Immigration and Naturalization Service**, 898 F.2d 474 (5th Cir. 1990).

<sup>10</sup>8 U.S.C. § 1105(a)(c).

Any alien subject to a final order of deportation has six months to file a petition for review in the appropriate circuit court. Filing such a petition effects an automatic stay of the alien's deportation. If the alien is "held in custody pursuant to an order of deportation," he may also seek a writ of habeas corpus in the appropriate district court. But, in any event, the right of judicial review of a final order of deportation does not require the I.N.S. to defer deportation of an alien. The burden is on the alien to obtain a stay.<sup>11</sup>

Ogunleye exhausted direct review of his order of deportation and was therefore not entitled to an automatic stay. Although he filed a petition for writ of habeas corpus, he did not request a stay of deportation from the District Director. Federal courts are courts of limited jurisdiction, having only that jurisdiction granted by the Congress. The congressional mandate of 8 U.S.C. § 1105(a)(c) directs that Ogunleye's deportation divested the district court, and this court, of jurisdiction. Ogunleye's petition for writ of habeas corpus is therefore DISMISSED for lack of jurisdiction. The motions for retraction of deportation and restoration into I.N.S. custody are DENIED as moot.

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<sup>11</sup>**Umanzor**, 782 F.2d at 1303 (citing 8 U.S.C. § 1105(a)).