

NON PRECEDENTIAL

UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

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No: 05-3041/3894

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TOSIN ADEGBUJI,

Petitioner

v.

ATTORNEY GENERAL OF THE UNITED STATES,

Respondent

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Petition for Review of an Order of the  
United States Department of Justice  
Board of Immigration Appeals  
(BIA No. A27-547-010)  
Immigration Judge: William K. Strasser

Initially Docketed as an Appeal from  
MDPA No. 04-cv-01392 and NJDC No. 04-cv-05020  
Prior to the Enactment of the Real ID Act of 2005

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Submitted Under Third Circuit LAR 34.1(a)  
September 25, 2007

Before: AMBRO, JORDAN and ROTH, *Circuit Judges*.

(Filed October 26, 2007 )

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OPINION OF THE COURT

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JORDAN, *Circuit Judge*

Tosin Adegboju, a native of Nigeria, petitions for review of immigration proceedings that resulted in government efforts to have him removed from this country. Because Adegboju has failed to exhaust his administrative remedies, we will dismiss the petition.

## I

While Adegboju has a long history of criminal and immigration proceedings in the United States, only the most recent events are directly relevant here. On May 1, 2002, he arrived at the Newark airport and attempted to enter the United States using a British passport, applying for admission through the Visa Waiver Program (VWP). Immigration officials discovered an outstanding arrest warrant arising from Adegboju's violation of terms of supervised release imposed in 1993 after he pleaded guilty to using a stolen credit card. Adegboju was paroled into the custody of the U.S. Marshals Service for federal criminal proceedings. After being sentenced to time served for the violation, he was returned to the custody of the Immigration and Naturalization Services (INS).

On May 24, 2002, the INS refused admission to Adegboju under the VWP.<sup>1</sup> A notice to Adegboju, dated July 10, 2002, stated that he had been found to be inadmissible pursuant to Section 212(a) of the Immigration and Nationality Act (INA). The notice also stated that Adegboju was barred from reentering the United States "at any

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<sup>1</sup>Adegboju signed a document requesting permission to withdraw his application for admission under the VWP "in lieu of a formal determination concerning [his] admissibility." (Administrative Record ["AR"] at 880.) That same document, however, shows that INS refused admission, rather than treating the application as withdrawn.

time because in addition to having been found inadmissible, [he had] been convicted of a crime designated as an aggravated felony.” (Administrative Record [“AR”] at 884.)

On July 15, 2002, Adegboji was placed on a plane to the United Kingdom. The British immigration authorities refused to admit him, because his British passport was fraudulent. He was returned to the United States. Facing the prospect of being sent to Nigeria, Adegboji claimed that he feared persecution there, and, on September 18, 2002, his case was referred to an Immigration Judge (IJ) for asylum-only proceedings.

On December 3, 2002, the IJ concluded that Adegboji was not credible and denied his applications for asylum, withholding of removal under the INA, and withholding of removal under the Convention Against Torture (CAT). Adegboji appealed that decision, and on April 8, 2003, the Board of Immigration Appeals (BIA) remanded the case for a new decision, because the IJ “improperly based the adverse credibility finding on [Adegboji’s] crimes of fraud rather than any inconsistencies in the record.” (AR at 20.) After reconsideration, the IJ concluded on June 13, 2003 that Adegboji was telling the truth about events in Nigeria and that he had established a well-founded fear of persecution. Because of Adegboji’s history of fraud and deceit, however, the IJ denied asylum as a matter of discretion. Based on the finding of a clear probability that Adegboji would be persecuted or tortured on returning to Nigeria, the IJ granted withholding of removal to Nigeria pursuant to the INA and the CAT. The Department of Homeland

Security (DHS) appealed, and on January 28, 2004, the BIA affirmed the IJ's decision. That was the BIA's final order on the merits of Adegbuji's case.

In a document dated October 26, 2004, Adegbuji moved to reopen. He did not challenge the BIA's decision on asylum, withholding of removal, or relief under the CAT. Instead, he argued that he was entitled to a hearing to address the July 10, 2002 notice from the INS stating that he was inadmissible. According to Adegbuji, the notice shows that he was removed for committing an aggravated felony, and he disputes that characterization of his criminal convictions. The BIA received the motion to reopen on January 18, 2005. Because the period for filing motions to reopen expired 90 days after the BIA's final order of January 28, 2004, the BIA denied Adegbuji's motion as untimely.

Both parties assert that, in February 2005, Adegbuji was put on a plane to the United Kingdom. Adegbuji's current whereabouts, however, are unclear from the record before us. The Administrative Record does not indicate whether Adegbuji was actually admitted into the U.K. in 2005. If anything had happened that would lead the British authorities to admit him after having refused to do so in 2002, it is not reflected in the record. In a letter to the United States District Court for the Middle District of Pennsylvania, dated February 15, 2005, which was forwarded to this Court, Adegbuji claimed that he was refused admission into the U.K. on February 12 and then detained by British authorities. However, the return address on Adegbuji's letter indicates that it was

sent from Lawrenceville, Georgia. Whether he is in this country or somewhere else is simply not clear on the record.

Back in 2002, after the IJ's initial decision denying all relief but before the BIA's remand, Adegbuji had filed an application for adjustment of status to lawful permanent resident, stating that he had entered the United States as a visitor under the VWP. Adegbuji apparently submitted the application to the INS rather than to the IJ or the BIA. Along with the application for adjustment of status, Adegbuji applied for a waiver of inadmissibility.

The petition for review before us now arises from two habeas petitions, one filed June 29, 2004 in the Middle District of Pennsylvania and the other filed October 14, 2004 in the District of New Jersey. The pending habeas petitions were converted and effectively consolidated into this petition for review pursuant to the Real ID Act, 119 Stat. 231 (2005); *see Bonhometre v. Gonzales*, 414 F.3d 442, 446 (3d Cir. 2005).

## II

Our jurisdiction extends to a review of the final order of removal. 8 U.S.C. § 1252(a)(1). “As a general rule, an alien must exhaust all administrative remedies available to him as of right before the BIA as a prerequisite to raising a claim before us.” *Bonhometre*, 414 F.3d at 447 (citing 8 U.S.C. § 1252(d)(1)). “To exhaust a claim before the agency, an applicant must first raise the issue before the BIA or IJ ... .” *Id.*

Here, Adegbuji makes two arguments that were not timely raised to the BIA. First, he argues that he is entitled to a hearing to challenge the determination on the July 10, 2002 notice that he committed an aggravated felony. During the extensive administrative proceeding in this case, including Adegbuji's own appeal to the BIA, Adegbuji failed to timely raise the aggravated felony issue, waiting nearly a year after the BIA's final order of removal before filing an untimely motion to reopen. Thus, Adegbuji has failed to exhaust, and we do not have jurisdiction to review the merits of the argument.

Second, Adegbuji argues that he is entitled to a hearing to decide whether he can adjust his status to lawful permanent resident, which would require the Attorney General to waive his inadmissibility. The applications for adjustment and waiver were filed while his case was being reviewed by the BIA, yet Adegbuji never raised them. Again, Adegbuji has failed to exhaust.

In sum, Adegbuji makes arguments here that were never timely made to the BIA. Therefore, we will dismiss his petition for review.