

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 97-60331
Summary Calendar

ABDUSSALAM MAHMOUD ALI,

Petitioner,

VERSUS

IMMIGRATION AND NATURALIZATION SERVICE,

Respondent.

Petition for Review of an Order of the
Board of Immigration Appeals
BIA No. A70 524 993

September 6, 2000

Before SMITH, BENAVIDES, and DENNIS, Circuit Judges.

PER CURIAM:*

Abdussalam Mahmoud Ali's petition for review of the Board of Immigration Appeals' (BIA) order reversing the immigration judge's grant of a suspension of deportation is DENIED. Ali argues that the BIA erred by applying the interim rules of the Illegal Immigration Reform and Immigration Responsibility Act (IIRIRA) in determining that he did not meet the seven-year physical-presence requirement for the suspension of deportation. See IIRIRA §

* Pursuant to 5th Cir. Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5th Cir. Rule 47.5.4.

309(c)(5)(a), as amended by NACARA § 203(1)(1). He also argues that retroactive application of § 309(c)(5) violates his constitutional rights.

This court reviews the BIA's legal determinations de novo. See Carbajal-Gonzalez v. INS, 78 F.3d 194, 197 (5th Cir. 1996). Ali's constitutional challenge to the application of § 309(c)(5) is foreclosed by this court's recent decision in Gonzalez-Torres v. INS, 213 F.3d 899 (5th Cir. 2000). Ali's contention that the IIRIRA is inapplicable to his situation likewise is without merit. The immigration judge's grant of the suspension of deportation was not a final decision by the BIA. See 8 C.F.R. § 3.39.

PETITION DENIED.