

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 05-2233

SUNDAY SONNY UZOKA,

Petitioner,

versus

ALBERTO R. GONZALES, Attorney General,

Respondent.

On Petition for Review of an Order of the Board of Immigration Appeals. (A73-595-488)

Submitted: June 30, 2006

Decided: August 7, 2006

Before NIEMEYER, KING, and GREGORY, Circuit Judges.

Petition denied by unpublished per curiam opinion.

Danielle Beach-Oswald, NOTO & OSWALD, P.C., Washington, D.C., for Petitioner. Peter D. Keisler, Assistant Attorney General, Jeffrey J. Bernstein, Senior Litigation Counsel, Bruce A. Ross, Office of Immigration Litigation, Civil Division, UNITED STATES DEPARTMENT OF JUSTICE, Washington, D.C., for Respondent.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

Sunday Sonny Uzoka, a native and citizen of Nigeria, petitions for review of a decision of the Board of Immigration Appeals affirming the immigration judge's ruling finding Uzoka removable as charged. We review for substantial evidence the Board's finding that the Attorney General established by clear and convincing evidence, 8 U.S.C. § 1229a(c)(3)(A) (2000); 8 C.F.R. § 1240.8(a) (2006), that Uzoka was removable under 8 U.S.C.A. § 1227(a)(1)(A), (B) (West 2000 & Supp. 2006), for seeking to procure a benefit under the Immigration and Naturalization Act by fraud or willful misrepresentation of a material fact and for overstaying his visa.

Having reviewed the decision of the Board and the administrative record, we conclude that the Attorney General sustained his burden of proof on both charges. We reject Uzoka's claim that he was denied due process by a former counsel's ineffective assistance, finding, as the Board did, that Uzoka did not substantially comply with the notice requirement of Matter of Lozada, 19 I. & N. Dec. 637 (B.I.A. 1988). Further, we agree with the Board that Uzoka would be unable to establish the prejudice necessary to sustain his due process claim, see Rusu v. INS, 296 F.3d 316, 324 (4th Cir. 2002) (holding that an alien, to prevail on an allegation of denial of due process, must establish prejudice from that violation), if we addressed the claim on its merits.

Accordingly, we deny the petition for review. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

PETITION DENIED