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## Document (1)

1. [Adekunle Asamu Oyeyemi v. INS, 1999 U.S. App. LEXIS 9025](#)

**Client/Matter:** -None-

**Search Terms:** 1999 U.S. App. LEXIS 9025

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## [Adekunle Asamu Oyeyemi v. INS](#)

United States Court of Appeals for the Eighth Circuit

May 5, 1999, Submitted ; May 12, 1999, Filed

No. 98-2314

### Reporter

1999 U.S. App. LEXIS 9025 \*

Adekunle Asamu Oyeyemi, Petitioner, v. Immigration and Naturalization Service, Respondent.

**Notice:** [\*1] RULES OF THE EIGHTH CIRCUIT COURT OF APPEALS MAY LIMIT CITATION TO UNPUBLISHED OPINIONS. PLEASE REFER TO THE RULES OF THE UNITED STATES COURT OF APPEALS FOR THIS CIRCUIT.

**Subsequent History:** Reported in Table Case Format at: [1999 U.S. App. LEXIS 27708](#).

**Disposition:** Denied

### Core Terms

persecution, asylum, deportability, objectively reasonable, well-founded, credible, petition for review, political opinion, fact finder, per curiam, conversion, mutilation, religion, customs, refugee, ethnic, alien, lived

### Case Summary

#### Procedural Posture

Petitioner appealed an order from the Board of Immigration Appeals dismissing petitioner's appeal for asylum and withholding of deportation pursuant to 8 U.S.C.S. § 1101(a)(42)(A).

#### Overview

The court affirmed a judgment dismissing petitioner's appeal of an order that denied his application for asylum and withholding of deportation. The court ruled that a reasonable fact finder could have found petitioner's fear of future persecution not objectively reasonable and that he was the victim of persecution. Petitioner lived in Nigeria after converting to Christianity, and left his wife and children there when he moved to the United States. The court found that behavior inconsistent with his

claimed fear of persecution. The court ruled that a dispute between petitioner and his family over his conversion to Christianity was not a basis for asylum. The court also noted that if petitioner's children were to return to Nigeria no evidence suggested they would be injured, because they were not injured when they lived there before. The court found petitioner's claim for asylum based on political opinion was not credible, and noted the numerous inconsistencies in the record.

#### Outcome

Order dismissing petitioner's appeal for asylum and withholding of deportation was affirmed because petitioner failed to show that he had an objective and reasonable fear of persecution. The court found defendant lived in Nigeria after converting to Christianity, and when he moved to the United States he left his children in Nigeria who were unharmed. The court found a family dispute over his religious conversion was not a basis for asylum.

### LexisNexis® Headnotes

Immigration Law > Asylum, Refugees & Related Relief > Asylum > Administrative Proceedings

Immigration Law > Asylum, Refugees & Related Relief > Asylum > Eligibility for Asylum

Immigration Law > Asylum, Refugees & Related Relief > Refugee Status > Eligibility for Refugee Status

[HN1](#) **Asylum, Administrative Proceedings**

Under 8 U.S.C.S. § 1158(b)(1), the Attorney General has discretion to grant asylum to a "refugee." Pursuant to 8 U.S.C.S. § 1101(a)(42)(A), a refugee is an alien

who is unwilling to return to his or her home country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.

Immigration Law > Asylum, Refugees & Related Relief > General Overview

## [HN2](#) Immigration Law, Asylum, Refugees & Related Relief

An applicant for asylum must show alleged fear of future persecution was both subjectively genuine and objectively reasonable.

Immigration Law > Judicial Proceedings > Judicial Review > Scope of Review

## [HN3](#) Judicial Review, Scope of Review

To overcome a Board of Immigration Appeal's finding that alien lacked well-founded fear, evidence must be so compelling that no reasonable fact finder could fail to find the requisite fear of persecution.

**Counsel:** For ADEKUNLE ASAMU OYEYEMI, Petitioner: Herbert Azubuike Igbanugo, Minneapolis, MN.

For IMMIGRATION AND NATURALIZATION SERVICE, Respondent: David Lee Lillehaug, U.S. ATTORNEY'S OFFICE, Minneapolis, MN.

For IMMIGRATION AND NATURALIZATION SERVICE, Respondent: Richard Soli, District Counsel, Dean Hove, U.S. IMMIGRATION & NATURALIZATION SERVICE, Bloomington, MN.

For IMMIGRATION AND NATURALIZATION SERVICE, Respondent: Janet Reno, Attorney General, U.S. DEPARTMENT OF JUSTICE, Mark C. Walters, Assistant Director, Robert L. Bombaugh, Michele Y.F. Sarko, Joseph F. Ciolino, Papu Sandhu, Bridgid E. Dowdal, U.S. DEPARTMENT OF JUSTICE, Office of Immigration Litigation, Elizabeth A. Welsh, U.S. DEPARTMENT OF JUSTICE, Office of Immigration, Washington, DC.

For IMMIGRATION AND NATURALIZATION SERVICE,

Respondent: Paul Schmidt, EXECUTIVE OFFICE FOR IMMIGRATION REVIEW, Falls Church, VA.

**Judges:** Before WOLLMAN, Chief Judge, RICHARD S. ARNOLD and BEAM, Circuit Judges.

## Opinion

Petition for Review of an Order of the Immigration and Naturalization Service.

PER CURIAM.

Adekunle Oyeyemi, a citizen of Nigeria, entered the United States in 1988 as a "J-1 exchange visitor." In 1993, the Immigration and Naturalization Service ordered Oyeyemi to show cause why he should not be deported. Following a hearing, an Immigration Judge found deportability had been established, denied Oyeyemi's application for asylum and withholding of deportation, and gave him the option to depart voluntarily. The Board of Immigration Appeals (BIA) dismissed his appeal, and Oyeyemi now petitions for review. He does not contest that he is deportable, but maintains that he was subject to past persecution and has a well-founded fear of future persecution based on his religion (conversion to Christianity), political opinion, ethnicity, and opposition to ethnic customs involving mutilation of children. Reviewing the BIA's denial [\*2] of asylum for an abuse of discretion, and the factual findings underlying its refusal to grant asylum under the substantial-evidence standard see [Feleke v. INS, 118 F.3d 594, 597-98 \(8th Cir. 1997\)](#), we deny Oyeyemi's petition.

[HN1](#) The Attorney General has discretion to grant asylum to a "refugee." See 8 U.S.C. § 1158(b)(1). A refugee is an alien who is unwilling to return to his or her home country because of "persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion." See 8 U.S.C. § 1101(a)(42)(A).

We conclude that Oyeyemi failed to demonstrate that he had been the victim of persecution, see [Miranda v. INS, 139 F.3d 624, 626, 627 \(8th Cir. 1998\)](#), and after reviewing the record and the parties' submissions, we also conclude that a reasonable fact finder could find Oyeyemi's fear of future persecution was not objectively reasonable, see [Kratchmarov v. Heston, 172 F.3d 551, 1999 U.S. App. LEXIS 5859, 1999 WL 177446](#), at \*2 (8th Cir. 1999) [HN2](#) (applicant must show alleged

fear of future persecution was both "subjectively genuine and objectively reasonable"); [Feleke, 118 F.3d at 598 HN3](#) (to overcome [\*3] BIA's finding that alien lacked well-founded fear, evidence must be "so compelling that no reasonable fact finder could fail to find the requisite fear of persecution"). The record shows that Oyeyemi lived in Nigeria for several years after converting to Christianity; that when he moved to the United States, he left his wife and children in Nigeria; and that after his wife's death, he returned to Nigeria, found someone to care for the children, and again left the children in Nigeria, where they remained until December 1991 without suffering any harm. This behavior is inconsistent with his claimed fear, and his testimony that he and his children are in danger appears speculative.

Although Oyeyemi's evidence showed a dispute with his family stemming from his conversion to Christianity, this personal matter does not provide a basis for asylum. See [Marquez v. INS, 105 F.3d 374, 380 \(7th Cir. 1997\)](#); [Krastev v. INS, 101 F.3d 1213, 1217 \(7th Cir. 1996\)](#); [Adebisi v. INS, 952 F.2d 910, 913-14 \(5th Cir. 1992\)](#); [Zayas-Marini v. INS, 785 F.2d 801, 805-06 \(9th Cir. 1986\)](#). Regarding Oyeyemi's claim that his children will be subject to tribal customs such as face marking and female-genital [\*4] mutilation, we note that the children have permanent-resident status in the United States. Even if they did return to Nigeria, there is no evidence they would be injured, because, as previously noted, they lived in Nigeria for years without being harmed.

The BIA found Oyeyemi's claim for asylum based on political opinion--a claim not included in his application for asylum--was not credible, noting numerous inconsistencies in the record. Reviewing the BIA's credibility finding for substantial evidence, see [Ghasemimehr v. INS, 7 F.3d 1389, 1391 \(8th Cir. 1993\)](#) (per curiam), we conclude that specific, convincing reasons support the finding that Oyeyemi's testimony was not credible and that he thus failed to present evidence showing his claimed subjective fear of political persecution was objectively reasonable.

Accordingly, we deny Oyeyemi's petition.