

1 UNITED STATES COURT OF APPEALS

2 FOR THE SECOND CIRCUIT

3 August Term, 2000

4 (Submitted: February 27, 2001 Decided: October 03, 2001)

5 Docket No. 01-4001

6 - - - - -  
7 SANDIA MALVOISIN,

8 Petitioner/Respondent,

9 - v. -

10 IMMIGRATION AND NATURALIZATION SERVICE,

11 Respondent/Movant.

12 - - - - - -B e  
13 f o r e: WINTER, STRAUB, and POOLER, Circuit Judges.

14 Motion to dismiss a petition for review of a deportation order  
15 issued by the Board of Immigration Appeals. Petitioner argues that,  
16 although her petition was untimely, we have jurisdiction to review  
17 the BIA's order because extraordinary circumstances prevented her  
18 from complying with the filing deadline. We hold that we lack  
19 jurisdiction, dismiss her petition, and deny her motion for a stay of  
20 deportation as moot.

21 Ralph J. DiPietro, DiPietro &  
22 Peppard, Grand Neck, New York, for  
23 Petitioner/Respondent.

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25 Megan L. Brackney, Assistant United  
26 States Attorney (Janet Reno, United  
27 States Attorney General, Mary Jo  
28 White, United States Attorney,

1 Kathy S. Marks, Assistant United  
2 States Attorney, Gideon A. Schor,  
3 Assistant United States Attorney,  
4 Diogenes P. Kekatos, Assistant

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6  
7 United States Attorney, and William  
8 Slattery, of counsel), New York, New  
9 York, for Respondent/Movant.

10  
11 WINTER, Circuit Judge:

12 Sandia Malvoisin, a citizen of Haiti, petitions for a review of  
13 a deportation order issued by an immigration judge and affirmed by  
14 the Board of Immigration Appeals ("BIA"). Malvoisin did not file her  
15 petition within the statutory deadline but argues that her failure to  
16 do so is excused because of extraordinary circumstances. The  
17 Immigration and Naturalization Service ("INS") has moved to dismiss  
18 her petition for lack of jurisdiction. We conclude that we lack  
19 jurisdiction and grant the motion.

20 BACKGROUND

21 After concluding that Malvoisin had illegally entered and  
22 stayed in this country, an immigration judge ordered Malvoisin's  
23 removal from the United States. According to the immigration judge's  
24 findings, Malvoisin had: (i) committed fraud or made a willful  
25 misrepresentation of a material fact to procure admission into the  
26 United States; (ii) falsely claimed to be a citizen of the United  
27 States; and (iii) stayed in the United States without a valid  
28 immigrant visa or other entry document. See 8 U.S.C. § 1182(a)(6).

1 Malvoisin, represented by counsel, appealed the deportation order to  
2 the BIA. In her appeal, she asked for asylum in the United States,  
3 explaining that she feared for her safety if she were to return to  
4 Haiti.

5 On December 1, 2000, the BIA dismissed Malvoisin's appeal and  
6 affirmed the deportation order. At that time, Malvoisin was  
7 incarcerated by the INS in a facility located in York, Pennsylvania.  
8 She asserts that her attorney failed to inform her of the BIA's  
9 decision. On December 28, 2000, Malvoisin was transferred to another  
10 facility located in Jamaica, New York, at which time she learned of  
11 the BIA's December 1 actions. On January 3, 2001, represented by a  
12 new attorney, she filed the present petition for review of the BIA's  
13 dismissal of her appeal and moved for an emergency stay of  
14 deportation. The INS, in response, filed a motion to dismiss,  
15 arguing that Malvoisin's petition was untimely and that we therefore  
16 lack jurisdiction.

17 DISCUSSION

18 Under the Immigration and Nationality Act, a "petition for  
19 review must be filed not later than 30 days after the date of the  
20 final order of removal." 8 U.S.C. § 1252(b)(1). The BIA rendered  
21 such a final order on December 1, 2000 when it dismissed Malvoisin's  
22 appeal and affirmed the immigration judge's deportation order.  
23 Accordingly, Malvoisin had thirty days from that date to file her

1 petition for review.

2 Because December 31, 2000 fell on a Sunday and January 1, 2001  
3 was a holiday, the effective final day for Malvoisin to file her  
4 petition was January 2, 2001. See Fed. R. App. P. 26(a)(3). Because  
5 she did not file her petition until January 3, 2001, it was untimely.

6 Malvoisin argues that her delay was excusable because she never  
7 heard from her first attorney about the BIA's December 1, 2000 order  
8 and learned of it only after arriving at the Jamaica facility on  
9 December 28, 2000, in the middle of the holiday season. At that  
10 time, she immediately obtained a new attorney.

11 Although Malvoisin's reasons for the failure to file a timely  
12 petition might be cause for extending the deadline under a more  
13 liberal standard, compliance with the time limit for filing a  
14 petition to review the BIA's final order is a strict jurisdictional  
15 prerequisite. See Zaluski v. INS, 37 F.3d 72, 73 (2d Cir. 1994) (per  
16 curiam); Stajic v. INS, 961 F.2d 403, 404 (2d Cir. 1992) (per  
17 curiam). When a petition is filed late, "we have no authority to  
18 consider" it. Arango-Aradondo v. INS, 13 F.3d 610, 612 (2d Cir.  
19 1994). Although our precedents on this issue addressed an earlier  
20 statute with a more generous deadline, "the [new] reduced time period  
21 does not change the jurisdictional nature of the statutory  
22 requirement." Stajic, 961 F.2d at 404. We thus lack jurisdiction.

23 We note that under the Federal Rules of Appellate Procedure, a

1 district court may grant a limited extension of time to file a notice  
2 of appeal based on excusable neglect or good cause. See Fed. R. App.  
3 P. 4(a)(5)(A)(ii). However, this rule applies to appeals from  
4 district courts and not to review of agency orders. See Fed. R. App.  
5 P. 20; see also Reich v. Occupational Safety and Health Review  
6 Comm'n, 998 F.2d 134, 136-37 (3d Cir. 1993); Mesa Airlines v. United  
7 States, 951 F.2d 1186, 1189 (10th Cir. 1991). Instead, we are  
8 expressly prohibited from extending the prescribed time, even for  
9 good cause, to file "a notice of appeal from or a petition to enjoin,  
10 set aside, suspend, modify, enforce, or otherwise review an order of  
11 an administrative agency." Fed. R. App. P. 26(b)(2); see also Mesa,  
12 951 F.2d at 1189. The "rule for review of agency proceedings grants  
13 no discretion to enlarge the time for filing." Kessenich v. CFTC,  
14 684 F.2d 88, 93 (D.C. Cir. 1982).

15 For the reasons indicated, we lack jurisdiction and dismiss the  
16 petition. The motion to stay deportation is denied as moot.