

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 10-1932

CYRUS NGANGA KIMANI,

Petitioner,

v.

ERIC H. HOLDER, JR.,

Respondent.

On Petition for review of an Order of the Board of Immigration Appeals.

Submitted: May 18, 2011

Decided: May 31, 2011

Before WILKINSON, WYNN, and DIAZ, Circuit Judges.

Petition dismissed in part, denied in part by unpublished per curiam opinion.

Anser Ahmad, AHMAD LAW OFFICES, P.C., Harrisburg, Pennsylvania, for Petitioner. Tony West, Assistant Attorney General, James A. Hunolt, Senior Litigation Counsel, Jesse D. Lorenz, OFFICE OF IMMIGRATION LITIGATION, Washington, D.C., for Respondent.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Cyrus Nganga Kimani, a native and citizen of Kenya, petitions for review of an order of the Board of Immigration Appeals (Board) dismissing his appeal from the Immigration Judge's denial of his applications for relief from removal.

Kimani first disputes the agency's finding that no exceptions applied to excuse the untimeliness of his asylum application. We have reviewed Kimani's claims in this regard and conclude that we do not have jurisdiction to review this determination. See 8 U.S.C. § 1158(a)(3) (2006); Lizama v. Holder, 629 F.3d 440, 445-46 (4th Cir. 2011); Gomis v. Holder, 571 F.3d 353, 358-59 (4th Cir. 2009), cert. denied, 130 S. Ct. 1048 (2010). Because the Board's finding of untimeliness is dispositive of Kimani's asylum claim, we do not address his contention that he established eligibility for asylum. Accordingly, we dismiss the petition for review in part with respect to this claim.

Next, Kimani challenges the Board's finding that he failed to qualify for withholding of removal. "To qualify for withholding of removal, a petitioner must show that he faces a clear probability of persecution because of his race, religion, nationality, membership in a particular social group, or political opinion." Rusu v. INS, 296 F.3d 316, 324 n.13 (4th Cir. 2002) (citing INS v. Stevic, 467 U.S. 407, 430 (1984)). We

have reviewed the administrative record and find that substantial evidence supports the finding below that Kimani did not meet his burden to qualify for this relief. Finally, we uphold the agency finding that Kimani failed to qualify for protection under the Convention Against Torture. See 8 C.F.R. § 1208.16(c)(2) (2010).

Accordingly, we dismiss in part and deny in part 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 DISMISSED IN PART, DENIED IN PART