

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 03-2521

BERHANEMESKEL GOSHU MENGISTU,

Petitioner,

versus

JOHN ASHCROFT, U.S. Attorney General,

Respondent.

On Petition for Review of an Order of the Board of Immigration Appeals. (A79-473-951)

Submitted: September 15, 2004

Decided: October 7, 2004

Before NIEMEYER, TRAXLER, and SHEDD, Circuit Judges.

Petition denied by unpublished per curiam opinion.

Aragaw Mehari, Washington, D.C., for Petitioner. Peter D. Keisler, Assistant Attorney General, Margaret J. Perry, Senior Litigation Counsel, Anh-Thu P. Mai, OFFICE OF IMMIGRATION LITIGATION, Washington, D.C., for Respondent.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Berhanemeskel Goshu Mengistu, a native and citizen of Ethiopia, petitions for review of an order of the Board of Immigration Appeals ("Board") affirming, without opinion, the immigration judge's order denying his applications for asylum, withholding of removal, and protection under the Convention Against Torture.

Mengistu challenges the immigration judge's finding that his asylum application was untimely because he failed to show by clear and convincing evidence that he filed his application within one year of the date of his arrival in the United States. See 8 U.S.C. § 1158(a)(2)(B) (2000). We conclude that we lack jurisdiction to review this claim pursuant to 8 U.S.C. § 1158(a)(3) (2000). See Zaidi v. Ashcroft, 377 F.3d 678, 680-81 (7th Cir. 2004) (collecting cases). Given this jurisdictional bar, we cannot review the underlying merits of Mengistu's asylum claim.

While we lack jurisdiction to consider the immigration judge's denial of Mengistu's asylum claim, we retain jurisdiction to consider the denial of his requests for withholding of removal and protection under the Convention Against Torture. See 8 C.F.R. § 1208.4(a) (2004). "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)). To qualify for protection under the Convention Against Torture, a petitioner bears the burden of proof of demonstrating that "it is more likely than not that he . . . would be tortured if removed to the proposed country of removal." 8 C.F.R. § 1208.16(c)(2) (2004). Based on our review of the record, we find that Mengistu has failed to meet these standards.

Accordingly, we deny Mengistu's 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