

UNPUBLISHED

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 08-1187**

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KAM HONG THAM,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney General,

Respondent.

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

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Submitted: August 6, 2008

Decided: December 15, 2008

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Before KING and GREGORY, Circuit Judges, and HAMILTON, Senior Circuit Judge.

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Dismissed in part and denied in part by unpublished per curiam opinion.

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H. Raymond Fasano, MADEO & FASANO, New York, New York, for Petitioner. Gregory G. Katsas, Acting Assistant Attorney General, Terri J. Scadron, Assistant Director, Richard Zanfardino, OFFICE OF IMMIGRATION LITIGATION, Washington, D.C., for Respondent.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Kam Hong Tham, a native and citizen of Indonesia, seeks review of an order of the Board of Immigration Appeals (Board) adopting and affirming the decision of the Immigration Judge (IJ) denying relief from removal. In his petition for review, Tham first argues that he qualified for asylum. We note that the Board expressly affirmed the IJ's finding that Tham's asylum application was not timely filed and that no exceptions applied to excuse the untimeliness. As Tham does not challenge the Board's finding that Tham's asylum application was untimely, we conclude that he has waived this claim on appeal. See Niang v. Gonzales, 492 F.3d 505, 510 n.5 (4th Cir. 2007) (noting that finding of untimeliness was waived on appeal, and if not court would lack jurisdiction to review it). We therefore may not review Tham's claim that he is eligible for asylum.

Tham next 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)). Based on our review of the record, we find that substantial evidence supports

the finding that Tham did not establish eligibility for withholding of removal.

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.

DISMISSED IN PART AND  
DENIED IN PART