UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 08-1194

KEDIR ESSA MUDESSIR,

        Petitioner,

    v.

ERIC H. HOLDER, JR., Attorney General,

        Respondent.

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

Submitted: February 25, 2009   Decided: March 10, 2009

Before MICHAEL, KING, and GREGORY, Circuit Judges.

Petition denied by unpublished per curiam opinion.

Mary Ann Berlin, Baltimore, Maryland, for Petitioner. Gregory G. Katsas, Assistant Attorney General, Daniel E. Goldman, Senior Litigation Counsel, Mona Maria Yousif, Office of Immigration Litigation, UNITED STATES DEPARTMENT OF JUSTICE, Washington, D.C., for Respondent.

PER CURIAM:

Kedir Essa Mudessir, a native and citizen of Ethiopia, petitions for review of an order of the Board of Immigration Appeals denying his motion to reopen and reconsider.[*] Based on our review of the record, we find that the Board did not abuse its discretion in denying the motion to reopen as untimely. 8 C.F.R. § 1003.2(a), (c) (2008). To the extent that Mudessir claims that the time limitation should have been equitably tolled on the ground that he received ineffective assistance of counsel, we find this claim foreclosed in light of our recent decision in Afanwi v. Mukasey, 526 F.3d 788, 796-99 (4th Cir. 2008) (holding that there is no constitutional right under the Fifth Amendment to effective assistance of counsel in removal proceedings). Accordingly, we deny the petition for review. We also deny the pending motion for remand. 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

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[*] We decline to review the Board's denial of the motion to reconsider in light of Mudessir's failure to challenge the denial before this court. See Ngarurih v. Ashcroft, 371 F.3d 182, 189 n.7 (4th Cir. 2004).