

UNPUBLISHEDUNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 06-1483

THOMAS AYALEW WELDESENBET,

Petitioner,

versus

ALBERTO R. GONZALES, Attorney General,

Respondent.

On Petition for Review of an Order of the Board of Immigration Appeals. (A95-263-107)

Submitted: November 15, 2006

Decided: January 4, 2007

Before MICHAEL, TRAXLER, and KING, Circuit Judges.

Petition denied by unpublished per curiam opinion.

Andres Cayetano Benach, MAGGIO & KATTAR, Washington, D.C., for Petitioner. Peter D. Keisler, Assistant Attorney General, Carol Federighi, Senior Litigation Counsel, Judith A. Hagley, Office of Immigration Litigation, UNITED STATES DEPARTMENT OF JUSTICE, Washington, D.C., for Respondent.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Thomas Ayalew Weldesenbet, a native and citizen of Ethiopia, petitions for review of the Board of Immigration Appeals' ("Board") order denying his motion to remand and dismissing his appeal from the immigration judge's order denying his applications for withholding from removal and withholding under the Convention Against Torture ("CAT"). We deny the petition for review.

We review the Board's denial of a motion to remand for abuse of discretion. See Obioha v. Gonzales, 431 F.3d 400, 408 (4th Cir. 2005) (setting forth standard of review). Whether Weldesenbet's ineffective assistance of counsel claim rises to the level of a due process claim is reviewed de novo. Figeroa v. INS, 886 F.2d 76, 78 (4th Cir. 1989). We find the Board did not err in determining whether Weldesenbet was prejudiced by counsel's alleged ineffective assistance. See 8 C.F.R. § 1003.1(d)(3)(ii) (2006); Savino v. Murray, 82 F.3d 593, 598 (4th Cir. 1996). We further agree with the Board that Weldesenbet failed to establish prejudice.

In addition, we find the immigration judge used the proper analysis in determining whether Weldesenbet was entitled to withholding from removal and substantial evidence supports the finding that there was a fundamental change of circumstances.

Accordingly, we deny 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 DENIED