

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 08-2309

DELALI GERTRUDE WEST, a/k/a Marie-Madeleine Nguema Ntsame,

Petitioner,

v.

ERIC H. HOLDER, JR., Attorney General,

Respondent.

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

Submitted: August 27, 2009

Decided: September 10, 2009

Before WILKINSON, MOTZ, and DUNCAN, Circuit Judges.

Petition dismissed in part and denied in part by unpublished per curiam opinion.

Rev. Uduak J. Ubom, Washington, D.C., for Petitioner. Tony West, Assistant Attorney General, John S. Hogan, Senior Litigation Counsel, Kiley L. Kane, 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Unpublished opinions are not binding precedent in this circuit.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:

Delali Gertrude West, a native and citizen of Togo, petitions for review of an order of the Board of Immigration Appeals ("Board") dismissing her appeal from the immigration judge's denial of her requests for asylum, withholding of removal, and protection under the Convention Against Torture.

West first argues that the Board and the immigration judge erred in concluding that her asylum application was untimely filed. She contends that she established changed circumstances to excuse her failure to file the application within one year of her arrival in the United States. We lack jurisdiction to review this determination, however, pursuant to 8 U.S.C. § 1158(a)(3) (2006), even in light of the passage of the REAL ID Act of 2005, Pub. L. No. 109-13, 119 Stat. 231. See Gomis v. Holder, 571 F.3d 353, 358-59 (4th Cir.), petition for cert. filed (Aug. 11, 2009) (No. 09-194). Given this jurisdictional bar, we cannot review the underlying merits of West's asylum claim. Accordingly, we dismiss this portion of her petition for review.

West also contends that the Board and the immigration judge erred in denying her request for withholding of removal. "Withholding of removal is available under 8 U.S.C. § 1231(b)(3) if the alien shows that it is more likely than not that her life or freedom would be threatened in the country of removal because

of her race, religion, nationality, membership in a particular social group, or political opinion.” Gomis, 571 F.3d at 359; see 8 U.S.C. § 1231(b)(3) (2009). Based on our review of the record, we find that substantial evidence supports the denial of West’s request for withholding of removal.

We also find that substantial evidence supports the finding that West failed to meet the standard for relief under the Convention Against Torture. To obtain such relief, an applicant must establish that “it is more likely than not that he or she would be tortured if removed to the proposed country of removal.” 8 C.F.R. § 1208.16(c)(2) (2009). We find that West failed to make the requisite showing before the immigration court.

Accordingly, we dismiss the petition for review in part and deny the petition for review in part. 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
AND DENIED IN PART