

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

June 12, 2009

Charles R. Fulbruge III
Clerk

No. 08-60634

Summary Calendar

HAI VAN TRAN

Petitioner

v.

ERIC H HOLDER, JR, U S ATTORNEY GENERAL

Respondent

Petition for Review of an Order of the
Board of Immigration Appeals
BIA No. A25 052 331

Before WIENER, STEWART, and CLEMENT, Circuit Judges.

PER CURIAM:*

Petitioner Hai Van Tran, a native and citizen of Vietnam, petitions this court to review the decision of the Board of Immigration Appeals (BIA) dismissing his appeal from the immigration judge's (IJ) order denying his application for a waiver of inadmissibility and ordering his removal. Tran argues that because he timely filed his § 212(c) waiver application, 8 U.S.C. § 1182(c), the IJ and the BIA erred in determining that under 8 C.F.R. § 1003.31 he waived his right to § 212(c) relief. Tran further argues that because he timely

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

filed his application, he was entitled to a hearing on it under the rubric of procedural due process.

Under § 1003.31(c), “[i]f an application or document is not filed within the time set by the Immigration Judge, the opportunity to file that application or document shall be deemed waived.” Neither the IJ nor the BIA erred in determining that Tran failed to file his § 212(c) waiver application within the time set by the immigration judge and that, as a result, Tran waived his right to apply for § 212(c) relief. *See* §1003.31.

AFFIRMED.