IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit
FILED
October 5, 2009
Charles R. Fulbruge III
Clerk

No. 08-61087
Summary Calendar

MANUEL FAJARDO-JIMENEZ,

Petitioner

v.

ERIC H. HOLDER, JR., U. S. ATTORNEY GENERAL,

Respondent

Petition for Review of an Order of the
Board of Immigration Appeals
A89 285 559

Before REAVLEY, DAVIS, and HAYNES, Circuit Judges.

PER CURIAM:[*]

Petitioner Manuel Fajardo-Jimenez petitions for review of the Board of Immigration Appeals's ("BIA") order removing Petitioner to Costa Rica. For the following reasons, the petition is DENIED.

1. Petitioner seeks political asylum in the United States after being arrested and scheduled for removal. The immigration judge ("IJ") found that Petitioner's application for asylum was untimely. *See* 8 U.S.C.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

§ 1158(a)(2)(B), (D). The BIA affirmed the IJ's determination. This Court has no jurisdiction to disturb this determination as it is specifically based on findings of fact. *See* 8 U.S.C. § 1158(a)(3); *Zhu v. Gonzales*, 493 F.3d 588, 594-95 (5th Cir. 2007).

2. Petitioner also seeks withholding of removal pursuant to 8 U.S.C. § 1231(b)(3)(A). However, there is substantial evidence that supports the BIA's determination that Petitioner was not eligible for withholding of removal and that Petitioner failed to establish "an objective 'clear probability' of persecution in the proposed country of removal." *See Majd v. Gonzales*, 446 F.3d 590, 595 (5th Cir. 2006) (quoting *INS v. Stevic*, 467 U.S. 407, 413, 104 S. Ct. 2489, 2492 (1984)).

3. Finally, Petitioner seeks protection pursuant to the Convention Against Torture. However, there is substantial evidence to support the BIA's determination that Petitioner failed to establish that it is more likely than not that he would be tortured if removed. *See* 8 C.F.R. §§ 1208.16(c)(2); 1208.18(a)(1); *Majd*, 446 F.3d at 595-96.

PETITION DENIED.