

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

January 7, 2011

Lyle W. Cayce
Clerk

No. 10-60382

Summary Calendar

ELMER ANTONIO PENA,

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. A094 027 264

Before KING, BENAVIDES, and ELROD, Circuit Judges.

PER CURIAM:*

Elmer Antonio Pena petitions for review of the Board of Immigration Appeals's (BIA) dismissal of his appeal from the Immigration Judge's (IJ) order denying his application for withholding of removal. The BIA's determination that an alien is not eligible for withholding of removal is a factual finding reviewed under the substantial evidence standard. *Efe v. Ashcroft*, 293 F.3d 899, 903 (5th Cir. 2002). "We will affirm the B[IA]'s decision unless the evidence

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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compels a contrary conclusion.” *Carbajal-Gonzalez v. INS*, 78 F.3d 194, 197 (5th Cir. 1996).

Pena contends that he is entitled to withholding of removal because he established past persecution and a well-founded fear of future persecution on account of his membership in a particular social group, to wit: El Salvadorans who refuse to join guerrilla-based gangs.¹ Contrary to his assertion, Pena has not demonstrated that he is a member of a particular social group. *See Mwembie v. Gonzales*, 443 F.3d 405, 414-15 (5th Cir. 2006). The suggested group upon which his claim is founded is too general to comprise a particular social group for immigration purposes. *See id.*; *see also Sanchez-Trujillo v. INS*, 801 F.2d 1571, 1576-77 (9th Cir. 1986). Accordingly, substantial evidence supports the BIA’s determination that Pena was not entitled to withholding of removal. *See Efe*, 293 F.3d at 903.

The petition for review is DENIED.

¹ To the extent that Pena renews his claim, raised for the first time in his administrative appeal to the BIA, that he fears future persecution on account of religion and political opinion, this court will not consider it. *See In re J-Y-C-*, 24 I. & N. Dec. 260, 261 n.1 (BIA 2007); *see also* FED. R. APP. P. 28(a)(5), (8)-(9); *United States v. Thames*, 214 F.3d 608, 611 n.3 (5th Cir. 2000).