

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

No. 16-60264
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

September 5, 2017

Lyle W. Cayce
Clerk

SARBELIO DE JESUS SAGASTUME-HUESO,

Petitioner

v.

JEFFERSON B. SESSIONS, III, U. S. ATTORNEY GENERAL,

Respondent

Petition for Review of an Order of the
Board of Immigration Appeals
BIA No. A205 988 315

Before DAVIS, PRADO, and COSTA, Circuit Judges.

PER CURIAM:*

Sarbelio de Jesus Sagastume-Hueso, a native and citizen of Guatemala, petitions this court for review of the decision of the Board of Immigration Appeals (BIA) affirming the Immigration Judge's (IJ) denial of relief under the Convention Against Torture (CAT). Sagastume-Hueso contends that, in light of the IJ's initial finding that he was eligible for CAT relief, the later entry of a contrary finding violated the "law of the case" doctrine. However, the BIA

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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had not “decided” any issues regarding CAT relief but rather returned the record for a more complete decision because the IJ’s insufficient findings precluded meaningful review. *See 8 C.F.R. § 1003.1(d)(3)(iv).*

The finding that Sagastume-Hueso did not suffer harm rising to the level of torture is supported by substantial evidence. *See Zhang v. Gonzales*, 432 F.3d 339, 344 (5th Cir. 2005). Though Sagastume-Hueso argues that the IJ failed to consider testimony that he was threatened and kicked, there is no evidence that this caused him “severe pain or suffering.” 8 C.F.R. § 208.18(a)(1). He fails to show that the evidence is so compelling that no reasonable fact finder could fail to find that it is more likely than not that he would be tortured if removed. *See Sharma v. Holder*, 729 F.3d 407, 411 (5th Cir. 2013).

The petition for review is DENIED