

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 04-1225

TOKA DIAGANA,

Petitioner,

versus

JOHN ASHCROFT, Attorney General,

Respondent.

On Petition for Review of an Order of the Board of Immigration Appeals. (A79-496-278)

Submitted: December 23, 2004

Decided: January 10, 2005

Before NIEMEYER, WILLIAMS, and DUNCAN, Circuit Judges.

Petition denied by unpublished per curiam opinion.

Thomas Hutchins, IMMIGRANT AND REFUGEE APPELLATE CENTER, LLC, Alexandria, Virginia, for Petitioner. Peter D. Keisler, Assistant Attorney General, Aviva L. Poczter, Allen W. Hausman, Senior Litigation Counsel, Washington, D.C., for Respondent.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

Toka Diagana, a native and citizen of Mauritania, petitions for review of an order of the Board of Immigration Appeals (Board) affirming the Immigration Judge's (IJ) denial of his application for asylum and withholding of removal. Diagana challenges the IJ's finding that he failed to meet his burden of proof to qualify for asylum.

To obtain reversal of a determination denying eligibility for relief, an alien "must show that the evidence he presented was so compelling that no reasonable factfinder could fail to find the requisite fear of persecution." INS v. Elias-Zacarias, 502 U.S. 478, 483-84 (1992). We have reviewed the evidence of record and conclude that Diagana fails to show that the evidence compels a contrary result. Having failed to qualify for asylum, Diagana cannot meet the higher standard to qualify for withholding of removal. Chen v. INS, 195 F.3d 198, 205 (4th Cir. 1999); INS v. Cardoza-Fonseca, 480 U.S. 421, 430 (1987).

Finally, we lack jurisdiction over Diagana's challenge to the denial of protection under the Convention Against Torture because he failed to properly exhaust this claim in his appeal to the Board. See 8 U.S.C. § 1252(d)(1) (2000); Asika v. Ashcroft, 362 F.3d 264, 267 n.3 (4th Cir. 2004), petition for cert. filed, 73 U.S.L.W. 3135 (U.S. Aug. 23, 2004) (No. 04-256).

Accordingly, we deny the petition for review. 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 DENIED