

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 05-2422

KOFFI KPOGNON,

Petitioner,

versus

ALBERTO R. GONZALES, Attorney General,

Respondent.

On Petition for Review of an Order of the Board of Immigration Appeals. (A76-781-031)

Submitted: August 28, 2006

Decided: September 19, 2006

Before MICHAEL, TRAXLER, and DUNCAN, Circuit Judges.

Petition denied by unpublished per curiam opinion.

Danielle Beach-Oswald, NOTO & OSWALD, P.C., Washington, D.C., for Petitioner. Peter D. Keisler, Assistant Attorney General, M. Jocelyn Lopez Wright, Assistant Director, Carol Federighi, Senior Litigation Counsel, Office of Immigration Litigation, Civil Division, UNITED STATES DEPARTMENT OF JUSTICE, Washington, D.C., for Respondent.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Koffi Kpognon, a native and citizen of Togo, petitions for review of an order of the Board of Immigration Appeals ("Board") denying his motion to reopen immigration proceedings. We have reviewed the record and the Board's order and find that the Board did not abuse its discretion in denying Kpognon's motion to reopen as untimely. See 8 C.F.R. § 1003.2(a) (2006). We conclude that Kpognon's equitable tolling argument was not administratively exhausted and is therefore not properly before the court. 8 U.S.C. § 1252(d)(1) (2000) ("A court may review a final order of removal only if the alien has exhausted all administrative remedies available"); Asika v. Ashcroft, 362 F.3d 264, 267 n.3 (4th Cir. 2004) (holding court lacks jurisdiction to consider a claim that was not raised before the Board and was therefore not exhausted under § 1252(d)(1)).* Accordingly, we deny the petition for review for the reasons stated by the Board. See In re: Kpognon, No. A76-781-031 (B.I.A. Nov. 29, 2005). 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

*Although Kpognon subsequently presented the claim to the Board in a motion to reconsider, no petition for review of the Board's order denying that motion has been filed.