

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 03-2169

ABDI ELMY HERSY,

Petitioner,

versus

JOHN ASHCROFT, Attorney General,

Respondent.

On Petition for Review of an Order of the Board of Immigration Appeals. (A77-820-549)

Submitted: April 30, 2004

Decided: August 10, 2004

Before MOTZ, TRAXLER, and SHEDD, Circuit Judges.

Petition denied by unpublished per curiam opinion.

James Thomas Reynolds, PAUL SHEARMAN ALLEN & ASSOCIATES, Washington, D.C., for Petitioner. Peter D. Keisler, Assistant Attorney General, Richard M. Evans, Assistant Director, Carl H. McIntyre, Jr., Office of Immigration Litigation, 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Unpublished opinions are not binding precedent in this circuit.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:

Abdi Elmy Hersy, a native and citizen of Somalia, has filed a petition for review of the Board of Immigrations Appeals' ("Board") dismissal of his appeal from an immigration judge's denial of his applications for asylum, withholding of removal and protection under the Convention Against Torture ("CAT"), and the Board's subsequent denial of his motion to reopen. We deny the petition for review.

Hersy's attorney failed to file a written brief or statement on appeal to the Board, despite his indication in the notice of appeal that he would do so. The Board properly exercised its discretion to summarily dismiss the appeal for failure to file a written brief or statement pursuant to 8 C.F.R. § 301(d)(2)(i)(E) (2002).

Likewise, the Board did not abuse its discretion in denying Hersy's untimely motion to reopen, in which Hersy alleged ineffective assistance of counsel but failed to explain his belated filing or request tolling of the filing deadline. See 8 C.F.R. § 3.2(c)(2) (2003); INS v. Doherty, 502 U.S. 314, 323-24 (1992).

Accordingly, we deny Hersy's 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