UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO SUMMARY ORDERS FILED AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY THIS COURT'S LOCAL RULE 0.23 AND FEDERAL RULE OF APPELLATE PROCEDURE 32.1. IN A BRIEF OR OTHER PAPER IN WHICH A LITIGANT CITES A SUMMARY ORDER, IN EACH PARAGRAPH IN WHICH A CITATION APPEARS, AT LEAST ONE CITATION MUST EITHER BE TO THE FEDERAL APPENDIX OR BE ACCOMPANIED BY THE NOTATION: "(SUMMARY ORDER)." UNLESS THE SUMMARY ORDER IS AVAILABLE IN AN ELECTRONIC DATABASE WHICH IS PUBLICLY ACCESSIBLE WITHOUT PAYMENT OF FEE (SUCH AS THE DATABASE AVAILABLE AT HTTP://www.CA2.uscourts.gov), THE PARTY CITING THE SUMMARY ORDER MUST FILE AND SERVE A COPY OF THAT SUMMARY ORDER TOGETHER WITH THE PAPER IN WHICH THE SUMMARY ORDER IS CITED. IF NO COPY IS SERVED BY REASON OF THE AVAILABILITY OF THE ORDER ON SUCH A DATABASE, THE CITATION MUST INCLUDE REFERENCE TO THAT DATABASE AND THE DOCKET NUMBER OF THE CASE IN WHICH THE ORDER WAS ENTERED.

At a stated term of the United State	es Court of Appeals
for the Second Circuit, held at the Dani	el Patrick Moyniha
United States Courthouse, 500 Pearl Stre	et, in the City of
New York, on the 20th day of February, t	wo thousand seven.
PRESENT:	
HON. JOSÉ A. CABRANES,	
HON. SONIA SOTOMAYOR,	
HON. REENA RAGGI,	
,	
Circuit Judges	
Circuit Judges. SHABAN ISLAMOVIC,	
SHABAN ISLAMOVIC,	
SHABAN ISLAMOVIC,	06-2242-ag
SHABAN ISLAMOVIC, Petitioner,	06-2242-ag NAC
SHABAN ISLAMOVIC, Petitioner,	_
SHABAN ISLAMOVIC, Petitioner, -v	_

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Sam Gjoni, New York, New York. 1 FOR PETITIONER: 2 3 FOR RESPONDENT: Peter D. Keisler, Assistant Attorney 4 General, Civil Division, David V. 5 Bernal, Assistant Director for the Office of Immigration Litigation 6 7 ("OIL"), Anthony P. Nicastro, 8 Attorney for OIL, Washington, DC. 9 10 UPON DUE CONSIDERATION, it is hereby ORDERED, ADJUDGED, AND DECREED that the petition for review of a decision of 11 12 the Board of Immigration Appeals ("BIA") is DENIED. Petitioner Shaban Islamovic, a citizen of Montenegro, 13 seeks review of an April 25, 2006 order of the BIA affirming 14 15 the December 7, 2004 decision of Immigration Judge ("IJ") Robert D. Weisel, denying his applications for asylum, 16 17 withholding of removal and relief under Article 3 of the Convention Against Torture ("CAT"). In re Shaban Islamovic, 18 19 No. A95 476 198 (B.I.A. Apr. 25, 2006), aff'q No. A95 476 20 198 (Immig. Ct. N.Y. City Dec. 7, 2004). We assume the 21 parties' familiarity with the underlying facts and 22 procedural history of the case. 23 Where, as here, the BIA summarily affirms the decision of the IJ without issuing an opinion, see 8 C.F.R. § 24 25 1003.1(e)(4), we review the IJ's decision as the final 26 agency determination. See, e.g., Twum v. INS, 411 F.3d 54, 27 58 (2d Cir. 2005). We review de novo questions of law and

- 1 the application of law to undisputed fact. See, e.g.,
- 2 Secaida-Rosales v. INS, 331 F.3d 297, 307 (2d Cir. 2003).
- 3 We review the agency's factual findings under the
- 4 substantial evidence standard. 8 U.S.C. § 1252(b)(4)(B); see
- 5 Zhao Jin Lin v. Att'y Gen. of U.S., 441 F.3d 193, 195 (2d
- 6 Cir. 2006).
- 7 Here, the IJ did not err in finding that the majority
- 8 of acts about which Islamovic complained the prohibition
- 9 against him speaking Albanian in school or attending school
- 10 after the war started, the harassment by neighbors, his
- 11 humiliation concerning his employment in the Yugoslav army
- 12 and his farm service after the war did not establish past
- persecution on account of his Albanian ethnicity. Tian-Yong
- 14 Chen v. INS, 359 F.3d 121, 128 (2d Cir. 2004).
- 15 The IJ's determination that the mistreatment of
- 16 Islamovic by Serb soldiers does not bear a nexus to a
- 17 protected ground is a mixed question of law and fact.
- 18 Substantial evidence supports the IJ's finding that the
- 19 Serbs raided Islamovic's home because they were searching
- 20 for weapons to further their war interests. Islamovic
- 21 himself testified, "[a]s I said before, they were looking
- for guns, ammunitions." Accordingly, the IJ did not err in
- 23 finding that this search bore no nexus to a protected ground

- 1 under the INA.
- 2 Furthermore, Islamovic offered little testimony or
- 3 evidence, other than his allegations of past persecution, to
- 4 indicate that he would suffer future mistreatment on account
- of his ethnicity if he returns to Montenegro. Accordingly,
- 6 the IJ also did not err in finding that Islamovic failed to
- 7 establish a well-founded fear of persecution on that basis.
- With respect to Islamovic's conscription claim,
- 9 [t]ypically, compulsory military service does not provide
- 10 asylum seekers with adequate cause for claiming
- 11 persecution." Islami v. Gonzales, 412 F.3d 391, 396 (2d
- 12 Cir. 2005). However, an individual may be eligible for
- asylum if his or her "refusal to serve in the military leads
- 14 to disproportionately excessive penalties" on account of a
- 15 protected ground. Id. In addition, "an individual may be
- 16 eliqible for asylum if he or she is fleeing to avoid
- 17 punishment for refusing to join a military force condemned
- by the international community." Id. (internal citations
- 19 omitted).
- Here, the IJ reasonably found that a report by the
- 21 British Foreign Office diminished or eliminated any
- 22 likelihood of Islamovic being subjected to
- "disproportionately excessive penalties" by the Montenegrin

government for having refused to fight in the Serb army. 1 The report indicates that the Montenegrin assembly passed a 2 3 law granting amnesty to persons who had evaded the draft from June 1998 to June 1999. Moreover, Islamovic offered no 5 evidence to establish that the Serb army of Montenegro is condemned by the international community. Accordingly, 6 7 substantial evidence supports the IJ's conclusion that Islamovic failed to establish eligibility for asylum based 8 on his refusal to serve in the Serb army. 9 10 Finally, because Islamovic does not meaningfully argue his withholding and CAT claims before this Court, we deem 11 12 these claims to have been waived. See Yueqing Zhang v. 13 Gonzales, 426 F.3d 540, 541 n.1, 545 n.7 (2d Cir. 2005). 14 For the foregoing reasons the petition for review is 15 DENIED. The stay of removal that the Court previously 16 granted in this petition is VACATED. 17 18 19 FOR THE COURT: 20 Thomas Asreen, Acting Clerk 21

By: ____

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