

1 **FOR PETITIONER:** **Sam Gjoni, New York, New York.**

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3 **FOR RESPONDENT:** **Peter D. Keisler, Assistant Attorney**
4 **General, Civil Division, David V.**
5 **Bernal, Assistant Director for the**
6 **Office of Immigration Litigation**
7 **("OIL"), Anthony P. Nicastro,**
8 **Attorney for OIL, Washington, DC.**

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10 UPON DUE CONSIDERATION, it is hereby ORDERED, ADJUDGED,
11 AND DECREED that the petition for review of a decision of
12 the Board of Immigration Appeals ("BIA") is DENIED.

13 Petitioner Shaban Islamovic, a citizen of Montenegro,
14 seeks review of an April 25, 2006 order of the BIA affirming
15 the December 7, 2004 decision of Immigration Judge ("IJ")
16 Robert D. Weisel, denying his applications for asylum,
17 withholding of removal and relief under Article 3 of the
18 Convention Against Torture ("CAT"). *In re Shaban Islamovic*,
19 No. A95 476 198 (B.I.A. Apr. 25, 2006), *aff'g* 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
24 of the IJ without issuing an opinion, see 8 C.F.R. §
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
13 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
22 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
5 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.

8 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
13 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 eligible for asylum if he or she is fleeing to avoid
17 punishment for refusing to join a military force condemned
18 by the international community." *Id.* (internal citations
19 omitted).

20 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
23 "disproportionately excessive penalties" by the Montenegrin

1 government for having refused to fight in the Serb army.
2 The report indicates that the Montenegrin assembly passed a
3 law granting amnesty to persons who had evaded the draft
4 from June 1998 to June 1999. Moreover, Islamovic offered no
5 evidence to establish that the Serb army of Montenegro is
6 condemned by the international community. Accordingly,
7 substantial evidence supports the IJ's conclusion that
8 Islamovic failed to establish eligibility for asylum based
9 on his refusal to serve in the Serb army.

10 Finally, because Islamovic does not meaningfully argue
11 his withholding and CAT claims before this Court, we deem
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.

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19 FOR THE COURT:
20 Thomas Asreen, Acting Clerk

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22 By: _____