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**UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, Foley Square, in the City of New York, on the 30th day of January, Two thousand and six.

PRESENT:

HON. ROGER J. MINER,
HON. DENNIS JACOBS,
HON. RICHARD C. WESLEY,
Circuit Judges.

Amar Jah,
Petitioner,

-v.-

No. 04-3070-ag
NAC

Alberto R. Gonzales,¹
Respondent.

FOR PETITIONER: Mark M. Nesbit, Columbus, Ohio.

FOR RESPONDENT: Daniel G. Bogden, United States Attorney for the District of Nevada, Paul S. Padda, Assistant United States Attorney, Las Vegas, Nevada.

UPON DUE CONSIDERATION of this petition for review of the Board of Immigration Appeals (“BIA”) decision, it is hereby ORDERED, ADJUDGED, AND DECREED that the

¹ Pursuant to Federal Rule of Appellate Procedure 43(c)(2), Attorney General Alberto R. Gonzales is automatically substituted for former Attorney General John Ashcroft in this case.

1 petition for review is DENIED.

2 Amar Jah, through counsel, petitions for review of the BIA decision denying his
3 application for asylum, withholding of removal, and relief under the Convention Against Torture
4 (“CAT”). We assume the parties’ familiarity with the underlying facts and procedural history.

5 This Court reviews the IJ’s decision where, as here, the BIA summarily adopted or
6 affirmed that decision without opinion. *Twum v. INS*, 411 F.3d 54, 58 (2d Cir. 2005). This
7 Court reviews questions of law, including claims that the IJ used an improper legal standard, *de*
8 *novo*. See *Secaida-Rosales v. INS*, 331 F.3d 297, 305 (2d Cir. 2003).

9 The IJ denied Jah’s asylum claim on the ground that he failed to prove by clear and
10 convincing evidence that his asylum claim was filed within one year of entry in the United States.
11 Because Jah makes a constitutional claim by arguing that the IJ denied him due process by not
12 holding a hearing with respect to the one-year bar issue, this Court has jurisdiction to review the
13 one-year bar finding. See 8 U.S.C. §§ 1158(a)(3), 1252(a)(2)(D).

14 The Due Process Clause applies to all persons in the United States, and it follows that an
15 alien in removal proceedings is entitled to due process of law. See, e.g., *Zadvydas v. Davis*, 533
16 U.S. 678, 693–94 (2001). Specifically, due process requires that aliens be afforded a
17 fundamentally fair removal hearing. See, e.g., *Felzcerek v. INS*, 75 F.3d 112, 115 (2d Cir. 1996).
18 In this case, the IJ delayed the case on three different occasions in order to allow Jah to submit
19 evidence relating to the potential one-year bar problem, as well as evidence relating to
20 withholding of removal and CAT claims from Senegal. Jah claimed that he had evidence
21 available at his next hearing, but it had not yet been translated. He did not have any other
22 documents that were suitable for submission with respect to the one-year bar issue. Although the

1 IJ did not hold a hearing on the one-year bar issue, the IJ did not violate Jah’s due process rights
2 because he was given a full and fair opportunity to present evidence proving he filed his asylum
3 application within one year of entry into the United States.

4 Since Jah declined to designate a country of removal, and the IJ was unable to determine
5 Jah’s country of citizenship or nationality, the IJ properly designated a country under 8 U.S.C. §
6 1231(b)(2)(E). Senegal, the country of removal, was “the country in which is located the foreign
7 port from which the alien left for the United States.” 8 U.S.C. § 1231(b)(2)(E)(ii). In his asylum
8 application, Jah admitted that he was living in Senegal immediately before entering the United
9 States and used a false Senegalese passport to enter the United States. Accordingly, the IJ’s
10 designation of Senegal as the country of removal was proper.

11 Jah argues that he did not have an opportunity to contest the designation of Senegal as the
12 country of removal, but the statute does not require this. The statute only requires that the IJ
13 designate the proper country of removal based on the guidelines provided. *See* 8 U.S.C. §
14 1231(b)(2). Because Jah failed to submit a withholding of removal or CAT claim based on fear
15 of returning to Senegal, the IJ properly determined that those claims were waived.

16 Jah also challenges the BIA’s decision to “streamline” his case. Pursuant to 8 C.F.R. §
17 1003.1(e), a single member of the BIA may affirm an IJ’s decision without opinion, or streamline
18 the case, when the board member determines that: (1) the result reached in the decision was
19 correct or that any errors in the decision were immaterial and harmless; and (2) either (a) the
20 issues on appeal are “squarely controlled” by existing precedent or do not involve the application
21 of precedent to a novel set of facts; or (b) the issues raised on appeal “are not so substantial that
22 the case warrants the issue of a written opinion.” *See* 8 C.F.R. § 1003.1(e)(4)(i)(A), (e)(4)(i)(B).

1 Because the IJ's decision did not contain any material errors, and the issues on appeal to the BIA
2 were squarely controlled by existing precedent and do not involve a novel set of facts, this case
3 fits squarely within the criteria laid out in the regulations.

4 Accordingly, the petition is DENIED. Any stay of removal that the Court previously
5 granted in this petition is VACATED, and any pending motion for a stay of removal in this
6 petition is DENIED as moot. Any pending request for oral argument in this petition is DENIED
7 in accordance with Federal Rule of Appellate Procedure 34(a)(2), and Second Circuit Local Rule
8 34(d)(1).

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11 FOR THE COURT:
12 Roseann B. MacKechnie, Clerk

13
14 By: _____