

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 07-1797

MANDOLE SAMY KOLI,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney General,

Respondent.

On Petition for Review of an Order of the Board of Immigration Appeals. (A97-197-169)

Submitted: March 31, 2008

Decided: April 22, 2008

Before TRAXLER and DUNCAN, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Petition dismissed in part and denied in part by unpublished per curiam opinion.

Theodore Nkwenti, Silver Spring, Maryland, for Petitioner. Jeffrey S. Bucholtz, Acting Assistant Attorney General, M. Jocelyn Lopez Wright, Assistant Director, Jonathan Robbins, UNITED STATES DEPARTMENT OF JUSTICE, Washington, D.C., for Respondent.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Mandole Samy Koli, a native and citizen of the Democratic Republic of Congo, seeks review of an order of the Board of Immigration Appeals (Board) affirming the decision of the Immigration Judge denying relief from removal. In his petition for review, Koli first argues that the Board erred in finding that his asylum application was not timely filed and that no exceptions applied to excuse the untimeliness. We lack jurisdiction to review this determination pursuant to 8 U.S.C. § 1158(a)(3) (2000), even in light of the passage of the REAL ID Act of 2005, Pub. L. No. 109-13, 119 Stat. 231. See Almuhtaseb v. Gonzales, 453 F.3d 743, 747-48 (6th Cir. 2006) (collecting cases). Given this jurisdictional bar, we may not review the underlying merits of Koli's asylum claim.

Koli also contends that the Board erred in denying his request for withholding of removal. "To qualify for withholding of removal, a petitioner must show that he faces a clear probability of persecution because of his race, religion, nationality, membership in a particular social group, or political opinion." Rusu v. INS, 296 F.3d 316, 324 n.13 (4th Cir. 2002) (citing INS v. Stevic, 467 U.S. 407, 430 (1984)). Based on our review of the record, we find that Koli failed to make the requisite showing. Likewise, we find that substantial evidence supports the finding that Koli failed to demonstrate that it is more likely than not

that he would be tortured if removed to the Democratic Republic of Congo. See 8 C.F.R. § 1208.16(c)(2) (2007). We therefore uphold the denial of relief under the Convention Against Torture.

Accordingly, we dismiss in part and deny in part the 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 DISMISSED IN PART
AND DENIED IN PART