

December 24, 2003

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 03-60393
Summary Calendar

GIRMAY NEGASH FESSHAYE,

Petitioner,

versus

JOHN ASHCROFT, U.S. ATTORNEY GENERAL,

Respondent.

Petition for Review of an Order of the
Board of Immigration Appeals
BIA No. A76 434 502

Before HIGGINBOTHAM, DAVIS, and PRADO, Circuit Judges.

PER CURIAM:*

Girmay Negash Fesshaye, a native and citizen of Eritrea, petitions for review of the final order of the Board of Immigration Appeals ("BIA") dismissing his appeal from the decision of the Immigration Judge ("IJ") denying his application for asylum as untimely; denying withholding of removal under the Immigration and Nationality Act ("INA"); and denying voluntary departure.

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

This court lacks jurisdiction to consider the BIA's determination that Fesshaye filed an untimely asylum application and failed to meet an exception for waiving the deadline.

See 8 U.S.C. § 1158(a)(3); see also Shahzad v. Ashcroft, No. 02-60025 (Oct. 9, 2002), slip op. at 2 (unpublished).

The BIA's dismissal of Fesshaye's appeal from the IJ's denial of withholding of removal is supported by substantial evidence. See INS v. Elias-Zacarias, 502 U.S. 478, 483-84 (1992); see also Berhane v. Ashcroft, No. 03-60045 (5th Cir. Oct. 15, 2003), slip op. 1-2 (unpublished).

Because Fesshaye has not briefed the denial of voluntary departure, that issue is abandoned. See Rodriguez v. INS, 9 F.3d 408, 414 n.15 (5th Cir. 1993); Yohey v. Collins, 985 F.2d 222, 224-25 (5th Cir. 1993).

PETITION DENIED.