

November 11, 2004

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 04-60211
Summary Calendar

IVAN CALIXTO-GONZALEZ,

Petitioner,

versus

JOHN ASHCROFT, U.S. ATTORNEY GENERAL,

Respondent.

Petition for Review of an Order of the
Board of Immigration Appeals
BIA No. A78 961 801

Before JOLLY, HIGGINBOTHAM, and BENAVIDES, Circuit Judges.

PER CURIAM:*

Ivan Calixto-Gonzalez, a native and citizen of El Salvador, petitions for review of an order from the Board of Immigration Appeals ("BIA") affirming the immigration judge's ("IJ") decision to deny his application for asylum. Calixto-Gonzalez has waived the denial of his application for withholding of removal by failing to assert that denial as a basis for reversal. See Rodriguez v. INS, 9 F.3d 408, 414 n.15 (5th Cir. 1993). This court will uphold the BIA's factual finding that an alien is not eligible for asylum if the determination is supported by

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

substantial evidence. Efe v. Ashcroft, 293 F.3d 899, 903 (5th Cir. 2002). "The substantial evidence standard requires only that the Board's conclusion be based upon the evidence presented and be substantially reasonable." Ontunez-Tursios v. Ashcroft, 303 F.3d 341, 350 (5th Cir. 2002) (internal quotation marks and citations omitted). Because the BIA summarily affirmed without opinion the IJ's decision, the IJ's decision is the final agency determination for judicial review. See 8 C.F.R. § 1003.1(a)(7)(iii); Soadjede v. Ashcroft, 324 F.3d 830, 832 (5th Cir. 2003).

Calixto-Gonzalez has failed to make the requisite showing that he was unable to return to El Salvador "because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion" 8 U.S.C. § 1101(a)(42)(A); see also Jukic v. INS, 40 F.3d 747, 749 (5th Cir. 1994).

Accordingly, the petition for review is DENIED.