

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

October 22, 2008

Charles R. Fulbruge III
Clerk

No. 07-60918
Summary Calendar

MACKLIN ARISTIDES HERNANDEZ-PORTILLO

Petitioner

v.

MICHAEL B MUKASEY, U S ATTORNEY GENERAL

Respondent

Petition for Review of an Order of the
Board of Immigration Appeals
BIA No. A95 069 861

Before GARZA, DeMOSS, and CLEMENT, Circuit Judges.

PER CURIAM:*

Macklin Aristides Hernandez-Portillo, a native and citizen of El Salvador, petitions this court for review of the Board of Immigration Appeals' (BIA) decision dismissing his appeal of the Immigration Judge's (IJ) denial of his application for withholding of removal. Hernandez-Portillo contends that his due process rights were violated when the IJ failed to conduct a fair and accurate hearing and properly consider all of the evidence presented in support of his application for withholding of removal. Because he failed to raise this

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

issue before the BIA, this court lacks jurisdiction to consider the issue. See *Roy v. Ashcroft*, 389 F.3d 132, 137 (5th Cir. 2004).

Hernandez-Portillo also contends that the BIA erred in affirming the IJ's denial of withholding of removal because he demonstrated a clear probability of persecution on account of his membership in particular social group. Even if Hernandez-Portillo established that he was a member of a particular social group, the BIA's determination that he failed to establish past persecution is supported by substantial evidence, and the record does not compel a contrary conclusion. See *Mikhael v. INS*, 115 F.3d 299, 304 (5th Cir. 1997). Further, because Hernandez-Portillo failed to establish past persecution, he is not entitled to a presumption that his life or freedom would be threatened upon his return to El Salvador. See 8 C.F.R. § 1208.16(b)(1)(i). Moreover, although Hernandez-Portillo argues generally that it is more likely than not that he would be persecuted upon his return because "[t]here is a pattern and practice of persecution directed towards young males in El Salvador forced and intimidated into becoming gang members," he failed to raise this issue before the BIA, and, thus, this court lacks jurisdiction to consider the issue. See *Roy*, 389 F.3d at 137.

Accordingly, Hernandez-Portillo's petition for review is DENIED IN PART and DISMISSED IN PART for lack of jurisdiction.