

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

September 23, 2013

Lyle W. Cayce
Clerk

No. 12-60924

Summary Calendar

JAVIER RODRIGUEZ-HIDALGO,

Petitioner

v.

ERIC H. HOLDER, JR., U. S. ATTORNEY GENERAL,

Respondent

Petition for Review of an Order of the
Board of Immigration Appeals
BIA No. A088 813 842

Before HIGGINBOTHAM, DENNIS, and GRAVES, Circuit Judges.

PER CURIAM:*

Javier Rodriguez-Hidalgo, a native and citizen of Costa Rica, applied for withholding of removal based on past harm and future harm because of his particular social group, “businessmen who have been swindled and who as a result of having gone to the police and filed charges, have been retaliated against.” The IJ determined that this alleged group did not meet the criteria for a particular social group and that Rodriguez-Hidalgo was not a refugee under

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

No. 12-60924

the statutory definition. The Board of Immigration Appeals affirmed the IJ's decision without opinion.

The Attorney General may grant relief to aliens who qualify as refugees. *Jukic v. INS*, 40 F.3d 747, 749 (5th Cir. 1994). A refugee is a person who is outside of his or her country and is “unable or unwilling to return 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.” *Id.* To establish that he is a member of a particular social group, the alien must show that he shares a common immutable characteristic that he cannot change or should not be required to change because it is fundamental to his individual identity or conscience. *Mwembie v. Gonzales*, 443 F.3d 405, 414-15 (5th Cir. 2006). Being a businessman who was swindled and complained about it to the authorities was not beyond Rodriguez-Hidalgo's power to change or so fundamental to his identity or conscience that it should not be changed. *See id.*

Rodriguez-Hidalgo's petition for review is DENIED.