

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

No. 13-60104
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

January 14, 2014

Lyle W. Cayce
Clerk

CELIA APAESTEGUI DE ABANTO,

Petitioner,

versus

ERIC H. HOLDER, JR., U.S. Attorney General,

Respondent.

Petition for Review of an Order of the
Board of Immigration Appeals
BIA No. A 088 065 940

Before JOLLY, SMITH, and CLEMENT, Circuit Judges.

PER CURIAM:*

Celia Apaestegui de Abanto, an illegal alien who is a native and citizen

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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. 13-60104

of Peru, has filed a petition for review of the summary dismissal by the Board of Immigration Appeals (“BIA”) of her appeal of the denial of relief from removal under the Convention Against Torture (“CAT”). Summary dismissal is authorized if, among other things, the appellant indicates on the notice-of-appeal form “that he or she will file a brief or statement in support of the appeal and, thereafter, does not file such brief or statement, or reasonably explain his or her failure to do so, within the time set for filing.” 8 C.F.R. § 1003.1(d)-(2)(i)(E); see *Claudio v. Holder*, 601 F.3d 316, 318 (5th Cir. 2010).

Apaestegui de Abanto, represented by counsel, indicated on the notice of appeal form (Form EOIR-26) that she would file a brief but failed to do so. Further, she did not avail herself of § 1003.1(d)(2)(i)(E)’s provision for lenity by explaining her failure to file a brief or statement within the time in which she was allowed to file the brief or separate statement. Thus, the BIA was within its “statutorily designated discretion” summarily to dismiss the appeal. See *Rioja v. Ashcroft*, 317 F.3d 514, 515–16 (5th Cir. 2003).

Accordingly, this court need not reach Apaestegui de Abanto’s contention that her notice of appeal otherwise apprised the BIA of the grounds for her appeal. See *id.* at 516. Nor do we reach her arguments going to the merits of her claim for relief under the CAT.

The petition for review is DENIED.