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1. [Hassan v. Gonzales, 221 Fed. Appx. 494](#)

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Hassan v. Gonzales

United States Court of Appeals for the Eighth Circuit

February 16, 2007, Submitted ; February 26, 2007, Filed

No. 04-4026

Reporter

221 Fed. Appx. 494 *; 2007 U.S. App. LEXIS 4418 **

Fadhel Chaloup Hassan, Petitioner, v. Alberto Gonzales, Attorney General of the United States of America, Respondent.

Notice: **[**1]** PLEASE REFER TO FEDERAL RULES OF APPELLATE PROCEDURE RULE 32.1 GOVERNING THE CITATION TO UNPUBLISHED OPINIONS.

Prior History: Petition for Review from the Board of Immigration Appeals.

Core Terms

persecution, removal, asylum, lack of jurisdiction, withholding, torture, change of circumstances, reasonable factfinder, petition for review, question of law, well-founded, probability, alien

Case Summary

Procedural Posture

Petitioner alien sought review of an order of the Board of Immigration Appeals (BIA), which dismissed his appeal of an immigration judge's (IJ) denial of asylum, withholding of removal, and relief under the Convention Against Torture.

Overview

The IJ determined that the alien failed to file a timely asylum application and did not suffer past persecution or have a well-founded fear of future persecution. The alien petitioned for review, contending that the IJ erred in determining that did not establish changed circumstances because the alien mistakenly believed that he had a longer employment visa than had been granted. The court denied the petition. The court lacked jurisdiction, pursuant to 8 U.S.C.S. § 1158(a)(3), over the determination that the asylum claim was time-

barred. The court found no substantial evidence in the records supporting a reasonable fear of persecution or torture because, although the alien argued that he was threatened with death if he refused to join the "Ba'ath Party" in Iraq, the alien's testimony supported the IJ's finding that the only credible threat the alien received was the loss of his lecturing job at a university. The claim that the IJ failed to consider whether it was impractical or inadvisable to remove the alien due to the lack of a central functioning government was not raised before the BIA and was unreviewable by the court, pursuant to 8 U.S.C.S. § 1252(d)(1).

Outcome

. The court denied the alien's petition for review.

LexisNexis® Headnotes

Immigration Law > Asylum, Refugees & Related Relief > Asylum > Judicial Review

[HN1](#) **Asylum, Judicial Review**

The REAL ID Act of 2005, codified in part at 8 U.S.C.S. § 1252(a)(2)(B) and (D), permits judicial review under 8 U.S.C.S. § 1158(a)(2) where there is a claim of a constitutional violation or question of law. Absent such a claim, however, an appellate court lacks jurisdiction to review the determination that an asylum application was barred as untimely filed.

Immigration Law > Asylum, Refugees & Related Relief > Asylum > Judicial Review

[HN2](#) **Asylum, Judicial Review**

See 8 U.S.C.S. § 1158(a)(3).

Immigration Law > Asylum, Refugees & Related Relief > Convention Against Torture

Immigration Law > Asylum, Refugees & Related Relief > Restriction on Removal > Eligibility Requirements

Immigration Law > Asylum, Refugees & Related Relief > Restriction on Removal > Judicial Review

[HN3](#) **Asylum, Refugees & Related Relief, Convention Against Torture**

An applicant seeking withholding of removal has the burden to show a clear probability of persecution. To overcome a substantial-evidence review standard, the applicant must show that no reasonable factfinder could fail to find the requisite probability of persecution. An independent analysis of a Convention Against Torture claim is not required if it was based upon the same factual basis as the withholding-of-removal claim.

Immigration Law > Judicial Proceedings > Judicial Review > Exhaustion of Remedies

[HN4](#) **Judicial Review, Exhaustion of Remedies**

See 8 U.S.C.S. § 1252(d).

Immigration Law > Judicial Proceedings > Judicial Review > Exhaustion of Remedies

Immigration Law > Judicial Proceedings > Judicial Review > Preservation for Review

[HN5](#) **Judicial Review, Exhaustion of Remedies**

The language of 8 U.S.C.S. § 1252(d)(1) requires that an alien not only pursue all stages of administrative review, but also raise all issues before the agency.

Counsel: For Fadhel Chaloup Hassan, Petitioner: Herbert Azubuike Igbanugo, BLACKWELL & IGBANUGO, Minneapolis, MN.

For John Ashcroft, Attorney General of the United States of America, Respondent: David E. Dauheimer, U.S. DEPARTMENT OF JUSTICE Civil Division, Washington, DC; Richard M. Evans, U.S. DEPARTMENT OF JUSTICE Office of Immigration Litigation, Washington, DC; Ari Nazarov, U.S. DEPARTMENT OF JUSTICE Civil Division, OIL, Washington, DC; Emily Anne Radford, U.S. DEPARTMENT OF JUSTICE Office of Immigration Litigation, Washington, DC.

Judges: Before RILEY, MELLOY, and SHEPHERD, Circuit Judges.

Opinion

[*495] PER CURIAM.

Fadhel Chaloup Hassan (Hassan), a native of Iraq, petitions for review of an order of the Board of Immigration Appeals (BIA), which dismissed Hassan's appeal of an Immigration Judge's (IJ's) denial of asylum, withholding of removal, and relief under the Convention Against Torture (CAT).

The IJ determined that Hassan failed to file a timely asylum [*2] application and did not present an extraordinary circumstance that would allow for late filing of the application. Despite this determination, the IJ discussed the merits of Hassan's application, finding that he had not suffered past persecution and did not have a well-founded fear of future persecution.

[HN1](#)  The REAL ID Act of 2005, codified in relevant part at 8 U.S.C. § 1252(a)(2)(B) and (D), permits judicial review under 8 U.S.C. § 1158(a)(2) where there is a claim of a constitutional violation or question of law. Absent such a claim, however, we lack jurisdiction to review the determination that an asylum application was barred as untimely filed. See 8 U.S.C. § 1158(a)(3) ("[n]o [HN2](#)  court shall have jurisdiction [*496] to review any determination of the Attorney General under [8 U.S.C. § 1158(a)(2)]"); [Ibarra-Terrazas v. Gonzales, 461 F.3d 1046, 1048 \(8th Cir. 2006\)](#) (finding jurisdiction to review questions of law); [Ming Ming Wijono v. Gonzales, 439 F.3d 868, 871 \(8th Cir. 2006\)](#) (recognizing that jurisdiction does exist to address constitutional claims); [Tolego v. Gonzales, 452 F.3d 763, 766 \(8th Cir. 2006\)](#) [*3] ("this court lacks jurisdiction to review either the IJ's determination that the asylum application was not timely filed or the Attorney General's decision rejecting the applicant's

complaint of changed circumstances"). Here, Hassan contends that the IJ erred in determining that he had not established changed circumstances because Hassan mistakenly believed that he had a longer employment visa than had been granted. Such is a discretionary decision, and we lack jurisdiction to review that decision.

With respect to Hassan's request for withholding of removal and CAT relief, Hassan failed to present evidence of past persecution and no reasonable factfinder would be bound to find that Hassan had a well-founded fear of future persecution or that Hassan would be more likely than not intentionally subjected to torture. Hassan argues on appeal that in 1994 he was threatened with death if he refused to join the Ba'ath Party, however the IJ found that the only credible threat Hassan received was loss of his lecturing job at the University. A thorough review of Hassan's testimony before the IJ supports this finding, and there is no substantial evidence in the record that would support a reasonable **[**4]** fear of future persecution or torture. See [Ming Ming Wijono, 439 F.3d at 872, 874 \(8th Cir. 2006\)](#) ([HN3](#)[↑]) applicant seeking withholding of removal had burden to show clear probability of persecution; to overcome substantial-evidence review standard, applicant must show that no reasonable factfinder could fail to find requisite probability of persecution; independent analysis of CAT claim is not required if it was based upon same factual basis as withholding-of-removal claim).

Hassan's remaining claim, that the IJ failed to consider whether it was impractical or inadvisable to remove Hassan due to the lack of a central functioning government, was not raised before the BIA and is unreviewable by this court. See 8 U.S.C. § 1252(d) ([HN4](#)[↑]) "A court may review a final order of removal only if the alien has exhausted all administrative remedies"; [Frango v. Gonzales, 437 F.3d 726, 728 \(8th Cir. 2006\)](#) ([HN5](#)[↑]) § 1252(d)(1) requires that alien not only pursue all stages of administrative review, but also raise all issues before the agency).

The petition for review is denied. See [8th Cir. R. 47B](#) **[**5]** .