

FILED

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NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

VICTOR ANTONIO AMAYA,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney
General,

Respondent.

No. 06-73738

Agency No. A98-117-190

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Argued and Submitted February 12, 2008
San Francisco, California

Before: SILVERMAN, McKEOWN, and TALLMAN, Circuit Judges.

Victor Amaya petitions for review of a decision by the Board of Immigration Appeals (“BIA”) summarily affirming an immigration judge’s (“IJ”) denial of asylum, withholding of removal, and protection under the Convention

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

Against Torture. We have jurisdiction under 8 U.S.C. § 1252, and we deny the petition for review.

Amaya argues the BIA's refusal to accept his untimely brief violated his Fifth Amendment right to due process and amounted to an abuse of discretion. Even if we were to presume deficient performance by counsel and to presume prejudice, Amaya must show "some plausible grounds for relief" on his underlying claim. *See Grigoryan v. Mukasey*, – F.3d –, 2008 WL 307455, at *3 (9th Cir. Feb. 5, 2008). This analysis turns on whether "the [IJ or BIA] could plausibly have held that [the petitioner] was [eligible for relief] based on the record before it." *Id.* (quoting *Ray v. Gonzales*, 439 F.3d 582, 589 (9th Cir.2006)). Amaya has failed to meet this standard. The sole basis of his application was his fear of generalized violence in El Salvador. Like in *Rojas-Garcia v. Ashcroft*, 339 F.3d 814, 826 (9th Cir. 2003), "All the king's horses and all the king's men and the very best counsel in the world could not induce a contrary decision on this record on appeal to the BIA."

Amaya's petition for review is DENIED.