

APR 28 2008

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

SHU XIONG DONG,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney
General,

Respondent.

No. 05-74753

Agency No. A95-448-360

MEMORANDUM*

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

Submitted April 22, 2008**

Before: GRABER, FISHER, and BERZON, Circuit Judges.

Shu Xiong Dong, a native and citizen of China, petitions *pro se* for review of the Board of Immigration Appeals' ("BIA") order dismissing his appeal from an immigration judge's decision denying his application for asylum, withholding of

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

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

removal, and protection under the Convention Against Torture (“CAT”). Our jurisdiction is governed by 8 U.S.C. § 1252. We review for substantial evidence, *Li v. Ashcroft*, 378 F.3d 959, 962 (9th Cir. 2004). We dismiss in part, and deny in part the petition for review.

We lack jurisdiction to review the determination that Dong’s application for asylum was untimely because Dong’s arrival date could not be considered to be an undisputed fact. *See Ramadan v. Gonzales*, 479 F.3d 646, 657 (9th Cir. 2007) (*per curiam*).

We lack jurisdiction over Dong’s claims based upon China’s forced sterilization policies because those issues were not exhausted before the BIA. *See Barron v. Ashcroft*, 358 F.3d 674, 677-78 (9th Cir. 2004).

In his opening brief, Dong failed to raise, and therefore has waived, any challenge to the IJ’s adverse credibility determination, which is dispositive of his withholding of removal and CAT claims. *See Martinez-Serrano v. INS*, 94 F.3d 1256, 1259 (9th Cir. 1996) (stating that issues not supported by argument are deemed abandoned). We therefore deny the petition as to Dong’s withholding of removal and CAT claims.

PETITION FOR REVIEW DISMISSED in part; DENIED in part.