

OCT 14 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MUSA SESAY,

Petitioner,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 08-71911

Agency No. A096-143-805

MEMORANDUM*

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

Submitted October 9, 2009**
Seattle, Washington

Before: D.W. NELSON, SILVERMAN and IKUTA, Circuit Judges.

Substantial evidence supports the BIA's finding that Musa Sesay did not suffer persecution on account of a protected ground. The evidence does not compel a finding that Sesay's persecution, if any, was on account of a political opinion, and Sesay's resistance to recruitment by a guerilla movement is

* 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).

insufficient to provide this nexus. *See INS v. Elias-Zacarias*, 502 U.S. 478, 481–82 (1992). Because Sesay did not prove he was eligible for asylum, his asylum application was properly denied. *See* 8 U.S.C. § 1158(b)(1)(B)(i).

“[I]n order to be eligible for asylum under the new [humanitarian asylum regulation], an applicant must still establish past persecution on account of a protected ground” *Belishta v. Ashcroft*, 378 F.3d 1078, 1080 (9th Cir. 2004) (order); *see also* 8 C.F.R. § 1208.13(b)(1)(iii). Because substantial evidence supports the BIA’s finding that Sesay failed to establish past persecution on account of a protected ground, Sesay necessarily failed to establish threshold eligibility for humanitarian asylum. Any error committed by the BIA in failing to articulate the denial of Sesay’s humanitarian asylum claim was harmless. *See Perez v. INS*, 96 F.3d 390, 393 (9th Cir. 1996).

PETITION DENIED.