

APR 30 2010

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

**GONZALO DE JESUS BARCO
GALLO,**

Petitioner,

v.

**ERIC H. HOLDER Jr., Attorney
General,**

Respondent.

No. 08-74369

Agency No. A035-983-216

MEMORANDUM*

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

Submitted April 13, 2010**
San Francisco, California

Before: **KOZINSKI**, Chief Judge, **NOONAN** and **CALLAHAN**, Circuit
Judges.

The BIA did not err by holding that the testimony of Barco-Gallo, even if
believed, did not entitle him to asylum or withholding of removal. Testimony that

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

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

Barco-Gallo was threatened with persecution because of his last name seventeen years before the BIA's decision, when the president of Colombia was also named Barco, did not establish a well-founded fear of persecution at the time of the decision, when President Barco was no longer in power.

Nor has Barco-Gallo shown that the BIA's consideration of the issue of asylum for the first time on appeal was "so fundamentally unfair that [he] was prevented from reasonably presenting his case," much less that "the outcome of the proceeding may have been affected." Ibarra-Flores v. Gonzales, 439 F.3d 614, 620–21 (9th Cir. 2006) (citation and internal quotation marks omitted). Barco-Gallo had an opportunity to put on evidence of persecution when he presented the IJ with his claim for withholding of removal, and there's no reason to think that Barco-Gallo would have presented more or different evidence of persecution if the BIA had remanded for the IJ to also consider the evidence under the less demanding standard applicable to claims for asylum. See, e.g., Pedro-Mateo v. INS, 224 F.3d 1147, 1150 (9th Cir. 2000).

DENIED.