

AUG 02 2010

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MAUDO L. FOFANA,

Petitioner - Appellant,

v.

NEIL CLARK,

Respondent - Appellee.

No. 08-35361

D.C. No. 2:07-cv-01749-JLR

MEMORANDUM\*

Appeal from the United States District Court  
for the Western District of Washington  
James L. Robart, United States District Judge, Presiding

Submitted July 19, 2010\*\*

Before: B. FLETCHER, REINHARDT, and WARDLAW, Circuit Judges.

Former federal prisoner Maudo L. Fofana appeals pro se from the district court's order denying his motion for relief under 28 U.S.C. § 2255. We have jurisdiction under 28 U.S.C. § 2253, and we affirm.

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\* 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).

The issue certified by the district court for appeal — whether an asylum application is an immigration document which falls under the purview of 18 U.S.C. § 1546(a) — was procedurally defaulted when Fofana did not raise the issue on direct appeal. Fofana has not demonstrated that he is entitled to excuse his procedural default of this issue. *See Bousley v. United States*, 523 U.S. 614, 622 (1998). In particular, he failed to demonstrate either “actual, factual innocence” or cause and prejudice as a result of any deficient performance by appellate counsel. *See United States v. Ratigan*, 351 F.3d 957, 964-65 (9th Cir. 2003).

We construe Fofana’s additional arguments as a motion to expand the certificate of appealability. So construed, the motion is denied. *See* 9th Cir. R. 22-1(e); *see also Hiivala v. Wood*, 195 F.3d 1098, 1104-05 (9th Cir. 1999) (*per curiam*).

**AFFIRMED.**