

DEC 27 2010

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>ARIS PURWADI,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p>Respondent.</p>

No. 08-70457

Agency No. A095-634-741

MEMORANDUM*

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

Submitted December 14, 2010**

Before: GOODWIN, WALLACE, and THOMAS, Circuit Judges.

Aris Purwadi, a native and citizen of Indonesia, petitions for review of the Board of Immigration Appeals” (“BIA”) order dismissing his appeal from an immigration judge’s (“IJ”) decision deeming abandoned his application for asylum, withholding of removal, and protection under the Convention Against

* 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).

Torture (“CAT”). Our jurisdiction is governed by 8 U.S.C. § 1252. We review de novo questions of law, for abuse of discretion the denial of a request for a continuance, and for substantial evidence factual findings. *Cui v. Mukasey*, 538 F.3d 1289, 1290 (9th Cir. 2008). We deny in part and dismiss in part the petition for review.

The IJ orally instructed Purwadi and the Department of Homeland Security provided written notification to Purwadi of the requirement to timely submit himself for fingerprinting and of the consequences of a failure to do so, yet Purwadi could not provide a reasonable explanation for his failure to comply with the fingerprinting requirement. The IJ did not abuse his discretion by denying Purwadi’s request for a continuance. *See* 8 C.F.R. § 1003.47(d).

Accordingly, the IJ did not err in deeming abandoned Purwadi’s application for asylum, withholding of removal, and CAT relief. *See* 8 C.F.R. § 1003.47(c); Purwadi’s due process contention fails as well. *See Lata v. INS*, 204 F.3d 1241, 1246 (9th Cir. 2000) (requiring agency error for a petitioner to establish a violation of due process).

We lack jurisdiction to consider Purwadi’s claim that ineffective assistance of counsel excuses his failure to timely submit himself for fingerprinting because

he failed to exhaust the claim before the BIA. *See Barron v. Ashcroft*, 358 F.3d 674, 677-78 (9th Cir. 2004).

PETITION FOR REVIEW DENIED in part; DISMISSED in part.