

United States Court of Appeals
For the Eighth Circuit

No. 23-1185

Marco Antonio Reyes Arias

Petitioner

v.

Merrick B. Garland, Attorney General of the United States

Respondent

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

Submitted: October 18, 2023

Filed: October 30, 2023

[Unpublished]

Before BENTON, KELLY, and STRAS, Circuit Judges.

PER CURIAM.

Honduran citizen Marco Antonio Reyes Arias petitions for review of an order of the Board of Immigration Appeals upholding the decision of an immigration judge

(IJ) to deny him asylum and withholding of removal.¹ Having jurisdiction under 8 U.S.C. § 1252, this court denies the petition.

This court concludes that the denial of asylum is not properly before the court, because in his administrative appeal, Reyes Arias did not challenge the IJ's finding that he was statutorily barred from seeking such relief because his application was untimely. See 8 U.S.C. § 1158(a)(2)(B); *Agha v. Holder*, 743 F.3d 609, 616 (8th Cir. 2014) (noncitizens may appeal only issues exhausted at administrative level).

This court finds no error in the determination that Reyes Arias's proposed particular social group (PSG) was not cognizable because it lacked social distinction and particularity. See *Rosales-Reyes v. Garland*, 7 F.4th 755, 759 (8th Cir. 2021) (whether group qualifies as PSG is a question of law, reviewed de novo, and turns on whether group is (1) composed of members who share a common immutable characteristic, (2) defined with particularity, and (3) socially distinct within the society in question).

Because Reyes Arias failed to establish membership in a PSG, the agency did not err in denying his application for withholding of removal. The court need not consider his remaining arguments on appeal. See *Uriostegui-Teran v. Garland*, 72 F.4th 852, 856 (8th Cir. 2023).

The petition is denied. See 8th Cir. R. 47B.

¹The denials of voluntary departure and for relief under the Convention Against Torture are not before this panel. See *Chay-Velasquez v. Ashcroft*, 367 F.3d 751, 756 (8th Cir. 2004) (claim not raised in opening brief is waived).