

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 04-1535

TJIPTO TAN,

Petitioner

v.

*ATTORNEY GENERAL
OF THE UNITED STATES

Respondent

* Substituted pursuant to Rule 43c, F.R.A.P.

On Appeal from an Order entered before
The Board of Immigration Appeals
(No. A 79-326-586)

Submitted Under Third Circuit LAR 34.1(a)
April 4, 2005

Before: BARRY, AMBRO and COWEN, Circuit Judges

(Filed: April 13, 2005)

OPINION

AMBRO, Circuit Judge

Tjipto Tan, a native and citizen of Indonesia, seeks review of a final order of removal issued by the Board of Immigration Appeals (“BIA”). The BIA affirmed without opinion an immigration judge’s (“IJ”) denial of Tan’s application for asylum, withholding of removal, and relief under the Convention Against Torture. This petition for review followed.

Tan raises two issues for review: the IJ’s failure to address whether Tan had a well-founded fear of future persecution on account of his religion and whether he had established a pattern and practice of persecution against non-Muslims in Indonesia. However, we may not review these issues because Tan failed to raise them before the BIA. In his brief to the BIA, he made no argument that the IJ erred in failing to address his religious persecution claim. Administrative Record (“A.R.”) at 10-18. In fact, Tan did not base his appeal to the BIA on religious persecution at all. A.R. at 13-18 (arguing persecution based on Chinese ethnicity). It is too late to change horses midstream and thus we deny the petition for review. *See Miah v. Ashcroft*, 346 F.3d 434, 439 n.2 (3d Cir. 2003) (“This Court may not consider particular questions not raised in an appeal to the Board.”) (citing *Alleyne v. INS*, 879 F.2d 1177, 1182 (3d Cir. 1989)).