

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 06-3187

LENEL JOSEPH,
Petitioner

v.

ATTORNEY GENERAL OF THE UNITED STATES,
Respondent

Petition for Review of an Order of the
United States Department of Justice
Board of Immigration Appeals
(BIA No. A-77-045-848)
Immigration Judge: Honorable Alberto J. Riefkohl

Submitted Under Third Circuit LAR 34.1(a)
December 14, 2007

Before: RENDELL, GREENBERG and VAN ANTWERPEN, Circuit Judges.

(Filed December 19, 2007)

OPINION OF THE COURT

RENDELL, *Circuit Judge*.

Lenel Joseph petitions for review of an order of the Board of Immigration Appeals (“BIA”) denying his third motion to reopen removal proceedings. For the reasons below, we will deny Joseph’s petition for review.

Joseph is a citizen of Haiti charged with removal under 8 U.S.C. § 1227. The Immigration Judge initially found Joseph removable, and the BIA affirmed. Over two years later, Joseph filed a motion to reopen, arguing that the political situation in Haiti had become worse and his life would be in danger if he were returned. The BIA denied petitioner's motion because it was untimely. Ten days later, Joseph filed a second motion to reopen, again arguing that his life would be in danger if he were returned to Haiti. The BIA denied that motion because it "exceed[ed] the numerical limitations for motions to reopen." Almost two years later, petitioner filed a third motion, arguing that, because his brother had received asylum in December 2004, his immigration proceedings should be reopened. The BIA denied this motion on the basis that the supporting documents did not demonstrate that Joseph was similarly situated to his brother or that he possessed a well-founded fear of persecution on account of his brother's activities or asylum status. This petition for review followed.

Joseph claims the BIA misapplied Section 1003.2(c)(1), which permits an alien to file a motion to reopen based on new evidence that is "material and was not available and could not have been discovered or presented at the former hearing." 8 C.F.R. § 1003.2(c)(1). We will not disturb the BIA's denial of a motion to reopen unless it is "arbitrary, irrational, or contrary to law." *Borges v. Gonzales*, 402 F.3d 398, 404 (3d Cir. 2005) (citations omitted).

Joseph argues that the fact that his brother was granted asylum in December 2004 satisfies Section 1003.2(c)(1). This fact alone, however, is insufficient. Joseph failed to

demonstrate that he is similarly situated to his brother. In fact, testimony on the record distinguishes the two. Joseph also failed to prove that he possessed a well-founded fear of persecution on account of his brother's activities or asylum status. The BIA's ultimate denial of Joseph's motion and its factual findings are supported by reasonable and substantial record evidence. Thus, Joseph has not shown that the BIA's decision to deny his motion to reopen is arbitrary, irrational, or contrary to law.

For the foregoing reasons, we will deny the petition for review.