

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

December 21, 2005

Clerk of Court

XIAO FENG JIANG,

Petitioner,

v.

ALBERTO R. GONZALES, Attorney
General,

Respondent.

No. 05-9518
(No. A95-450-316)
(Petition for Review)

ORDER AND JUDGMENT*

Before **McCONNELL**, **ANDERSON**, and **BALDOCK**, Circuit Judges.

After examining the briefs and appellate record, this panel has determined unanimously to grant the parties' request for a decision on the briefs without oral argument. *See* Fed. R. App. P. 34(f); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.

Xiao Feng Jiang petitions for review of an order of the Board of Immigration Appeals (BIA) affirming the immigration judge's (IJ) denial of

* This order and judgment is not binding precedent, except under the doctrines of law of the case, *res judicata*, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

petitioner's application for asylum and withholding of removal.¹ The BIA affirmed the denial of petitioner's asylum application because he failed to establish that he filed his application within the one-year filing period. We lack jurisdiction to review the BIA's determination that petitioner is ineligible for asylum because his application was untimely. *Tsevegmid v. Ashcroft*, 336 F.3d 1231, 1234-35 (10th Cir. 2003); 8 U.S.C. § 1158(a)(3).

The BIA also denied petitioner relief in the form of withholding of removal. Although petitioner had not challenged the IJ's denial of this relief in his briefing before the BIA, the BIA *sua sponte* decided the issue and denied relief. Petitioner, however, has not presented any argument on withholding of removal in his briefing before this court; his appellate brief focuses solely on the merits of his asylum claim, *see* Aplt. Br. at 13-21. "Issues not raised in the opening brief are deemed abandoned or waived." *Tran v. Trs. of State Colls. in Colo.*, 355 F.3d 1263 (10th Cir. 2004) (quotation omitted). Accordingly, petitioner's withholding of removal claim is waived.

¹ The IJ also denied relief under the Convention Against Torture, but petitioner did not challenge that ruling before the BIA; therefore, we lack jurisdiction to review it. *See Akinwunmi v. INS*, 194 F.3d 1340, 1341 (10th Cir. 1999).

The judgment of the BIA is AFFIRMED.

Entered for the Court

Stephen H. Anderson
Circuit Judge