

Case Summary: Immigration Law Advisor

U.S. Department of Justice, Executive Office for Immigration Review

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Gaye v. Lynch, No. 14-3652, 2015 WL 3555937 (6th Cir. June 9, 2015): The Sixth Circuit dismissed in part and denied in part a petition for review from a Board decision dismissing an appeal from the Immigration Judge's denial of asylum, withholding of removal, and protection under the Convention Against Torture ("CAT"). The court found that it lacked jurisdiction to consider the Immigration Judge's determination that the asylum application was untimely. The court also concluded that it lacked jurisdiction to consider a due process issue that the petitioner had not raised before the Board, consideration of which was thus precluded by the exhaustion doctrine. The court next concluded that the petitioner had not met his burden of establishing eligibility for either withholding of removal or CAT protection. The court was not persuaded by the petitioner's claim that he was entitled under the Act to notice of the type of corroborating evidence required of him. The court disagreed with the Ninth Circuit's decision in *Ren v. Holder*, 648 F.3d 1079 (9th Cir. 2011), which held that such notice is required by the plain language of the REAL ID Act of 2005, Pub. L. No. 109-13, 119 Stat. 231. Finally, the Sixth Circuit concluded that the petitioner did not establish a claim of ineffective assistance of counsel, since no evidence was offered to establish prejudice based on his prior counsel's purported errors. The court's decision included a dissent.