UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO SUMMARY ORDERS FILED AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY THIS COURT'S LOCAL RULE 32.1 AND FEDERAL RULE OF APPELLATE PROCEDURE 32.1. IN A BRIEF OR OTHER PAPER IN WHICH A LITIGANT CITES A SUMMARY ORDER, IN EACH PARAGRAPH IN WHICH A CITATION APPEARS, AT LEAST ONE CITATION MUST EITHER BE TO THE FEDERAL APPENDIX OR BE ACCOMPANIED BY THE NOTATION: "(SUMMARY ORDER)." A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF THAT SUMMARY ORDER TOGETHER WITH THE PAPER IN WHICH THE SUMMARY ORDER IS CITED ON ANY PARTY NOT REPRESENTED BY COUNSEL UNLESS THE SUMMARY ORDER IS AVAILABLE IN AN ELECTRONIC DATABASE WHICH IS PUBLICLY ACCESSIBLE WITHOUT PAYMENT OF FEE (SUCH AS THE DATABASE AVAILABLE AT HTTP://WWW.CA2.USCOURTS.GOV/). IF NO COPY IS SERVED BY REASON OF THE AVAILABILITY OF THE ORDER ON SUCH A DATABASE, THE CITATION MUST INCLUDE REFERENCE TO THAT DATABASE AND THE DOCKET NUMBER OF THE CASE IN WHICH THE ORDER WAS ENTERED.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 16th day of October, two thousand seven.

PRESENT:

HON. DENNIS JACOBS,
Chief Judge,
HON. CHESTER J. STRAUB,
HON. ROBERT D. SACK,
Circuit Judges.

ISIDRO LEONARD-SANTANA,
Petitioner,

v. 05-6307-ag
NAC

UNITED STATES DEPARTMENT OF JUSTICE,
Respondent.

FOR PETITIONERS: Jorge Guttlein and Associates, New York, New York.

FOR RESPONDENT: **Michael J. Garcia, United States Attorney for the Southern District of New York, Peter M. Skinner, Neil M. Corwin, Assistant United States Attorneys, Of Counsel, New York, New York.**

UPON DUE CONSIDERATION of this petition for review of a Board of Immigration Appeals ("BIA") decision, it is hereby ORDERED, ADJUDGED, AND DECREED that the petition for review is DENIED.

Petitioner Isidro Leonard Santana, a native and citizen of the Dominican Republic, seeks review of an October 28, 2005 order of the BIA affirming the July 8, 2004 decision of Immigration Judge ("IJ") Alan Page, denying his application for asylum, cancellation of removal, withholding of removal, and relief under the Convention Against Torture ("CAT"). In re Isidro Leonard-Santana, No. A72 793 157 (B.I.A. Oct. 28, 2005), aff'g Nos. A72 793 157 (Immig. Ct. N.Y. City July 8, 2004). We assume the parties' familiarity with the underlying facts and procedural history in this case.

Where the BIA summarily affirms the decision of the IJ without issuing an opinion, see 8 C.F.R. § 1003.1(e)(4), this Court reviews the IJ's decision as the final agency determination. See,e.g., Twum v. INS, 411 F.3d 54, 58 (2d Cir. 2005). This Court generally reviews the agency's

factual findings under the substantial evidence standard, treating them as "conclusive unless any reasonable adjudicator would be compelled to conclude to the contrary." 8 U.S.C. § 1252(b)(4)(B); see, e.g., Zhou Yun Zhang v. INS, 386 F.3d 66, 73 & n.7 (2d Cir. 2004), overruled in part on other grounds by Shi Liang Lin v. U.S. Dep't of Justice, 494 Fd.3 296 (2d Cir. 2007)(en banc). Normally, we lack jurisdiction to review final orders of removal against aliens who are removable by reason of having committed an aggravated felony or a drug crime. 8 U.S.C. § 1252(a)(2)(C). However, we retain jurisdiction to review constitutional claims and questions of law. 8 U.S.C. § 1252(a)(2)(D). Questions of law and the application of law to undisputed fact are reviewed de novo. See Secaida-Rosales v. INS, 331 F.3d 297, 307 (2d Cir. 2003).

An argument that the agency applied an erroneous legal standard raises a question of law and invokes this Court's jurisdiction. Ilyas Khan v. Gonzales, 495 F.3d 31, 35 (2d Cir. 2007). The government contends that we lack jurisdiction to consider Santana's argument that the IJ failed to articulate and apply the correct legal standard in denying his claim for deferral of removal under the CAT.

However, to the extent Santana argues that the IJ applied an erroneous legal standard, he raises a question of law over which we retain jurisdiction. Id.

Nonetheless, Santana's argument is meritless. The IJ clearly articulated the proper standard for Santana's CAT claim when he stated that the record did not contain "enough probative evidence . . . presented by the respondent to lead to the conclusion that it is more likely than not that he would be tortured." See Khouzam v. Ashcroft, 361 F.3d 161, 168 (2d Cir. 2004). Moreover, the record reveals that the IJ properly applied the correct legal standard to the facts of Santana's case. Santana argues, however, that the IJ ignored his obligation to assist in developing the record by refusing to grant a continuance so that Santana's ex-wife could testify at his hearing. See Secaida-Rosales, 331 F.3d at 306. However, Santana was given ample opportunity, including two continuances, to produce his ex-wife as a witness. In any event, Santana has not established that he was prejudiced, that the outcome of his proceedings was altered in any way by the IJ's refusal to grant the continuance, or that the denial of a continuance interfered

with his right to full and fair hearing. Li Hua Lin v. U.S. Dep't of Justice, 453 F.3d 99, 104-05 (2d Cir. 2006).

For the foregoing reasons, the petition for review is DENIED.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk

By: _____