

DEC 26 2008

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>NIKKO; LANNY SUDJONO,</p> <p style="text-align: center;">Petitioners,</p> <p>v.</p> <p>MICHAEL B. MUKASEY, Attorney General,</p> <p style="text-align: center;">Respondent.</p>
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No. 06-71961

Agency Nos. A096-364-723
A096-364-724

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted December 17, 2008**

Before: GOODWIN, WALLACE, and TROTT, Circuit Judges.

Nikko and her husband Lanny Sudjono, natives and citizens of Indonesia, petition pro se for review the Board of Immigration Appeals' ("BIA") order affirming an immigration judge's decision denying their application for asylum,

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

withholding of removal, and relief under the Convention Against Torture (“CAT”). Our jurisdiction is governed by 8 U.S.C. § 1252. We review for substantial evidence, *Nagoulko v. INS*, 333 F.3d 1012, 1015 (9th Cir. 2003), and we deny in part and dismiss in part the petition for review.

The record does not compel the conclusion that petitioners have shown extraordinary or changed circumstances to excuse the untimely filing of their asylum application. *See* 8 C.F.R. § 1208.4(a)(4), (5). Accordingly, we deny the petition as to the asylum claim.

Substantial evidence supports the agency’s denial of withholding of removal, because petitioners failed to demonstrate the harassment they suffered rose to the level of past persecution. *See Nagoulko*, 333 F.3d at 1016-18. Furthermore, even if the disfavored group analysis set forth in *Sael v. Ashcroft*, 386 F.3d 922, 927-29 (9th Cir. 2004) applies in the context of withholding of removal, petitioners have not established that it is more likely than not that they will be persecuted if they returned to Indonesia. *See Hoxha v. Ashcroft*, 319 F.3d 1179, 1184-85 (9th Cir. 2003). Nor have petitioners shown that the record demonstrates a pattern and practice of persecution against Chinese Christians in Indonesia. *See Lolong v. Gonzales*, 484 F.3d 1173, 1180-81 (9th Cir. 2007) (en banc).

We lack jurisdiction to review petitioners' contention regarding CAT relief because they failed to raise that issue before the BIA and thereby failed to exhaust their administrative remedies. *See Barron v. Ashcroft*, 358 F.3d 674, 678 (9th Cir. 2004).

PETITION FOR REVIEW DENIED in part; DISMISSED in part.