

MAR 02 2009

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>SERGIY BODNAR,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p>Respondent.</p>
---

No. 06-72741

Agency No. A098-157-469

MEMORANDUM\*

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

Submitted February 18, 2009\*\*

Before: BEEZER, FERNANDEZ, and W. FLETCHER, Circuit Judges.

Sergiy Bodnar, a native and citizen of the Ukraine, petitions for review of the Board of Immigration Appeals' decision dismissing his appeal from an immigration judge's denial of his application for asylum, withholding of removal,

---

\* 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).

and relief under the Convention Against Torture (“CAT”). We have jurisdiction under 8 U.S.C. § 1252. We review for substantial evidence and will uphold the agency’s decision unless the evidence compels a contrary conclusion.

*Molina-Estrada v. INS*, 293 F.3d 1089, 1093 (9th Cir. 2002). We dismiss the petition in part and deny the petition in part.

We lack jurisdiction over Bodnar’s claim that changed circumstances excuse the untimely filing of his asylum application because the particular changed country conditions Bodnar raises in his opening brief were not presented in administrative proceedings below. *See Barron v. Ashcroft*, 358 F.3d 674, 677 (9th Cir. 2004). Accordingly, we dismiss Bodnar’s asylum claim.

Substantial evidence supports the agency’s denial of Bodnar’s withholding of removal claim because the record does not compel the conclusion that he faces a clear probability of future persecution. *See Recinos De Leon v. Gonzales*, 400 F.3d 1185, 1190 (9th Cir. 2005); *see also Molina-Estrada*, 293 F.3d at 1096 (stating that when petitioner has not established past persecution, there is no presumption of a well-founded fear of future persecution to overcome).

Substantial evidence also supports the agency’s denial of Bodnar’s CAT claim because he failed to establish that it is more likely than not that he will be

tortured if he returns to the Ukraine. *See Hasan v. Ashcroft*, 380 F.3d 1114, 1122-23 (9th Cir. 2004).

**PETITION FOR REVIEW DISMISSED in part; DENIED in part.**