

MAR 13 2009

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ARTYOM OGANESOV, et al.,
Petitioners
v.
ERIC H. HOLDER, Jr., Attorney General,**
Respondent.

No. 05-71258

Agency Nos. A79-566-235/236
/237/238

MEMORANDUM *

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

Argued and Submitted February 5, 2009
Pasadena, California

Before: SILVERMAN and CALLAHAN, Circuit Judges, and MILLS,** District
Judge.

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

** Eric H. Holder, Jr., is substituted for his predecessor, Michael B.
Mukasey, as Attorney General of the United States. Fed R. App. P. 43(c)(2).

*** The Honorable Richard Mills, United States District Judge for
the Central District of Illinois, sitting by designation.

Lead petitioner Artyom Oganosov, a citizen of Armenia, seeks review of the Board of Immigration Appeal’s order affirming an Immigration Judge’s (“IJ”) denial of asylum, withholding of removal, and protection under the Convention Against Torture (“CAT”). We ask whether the IJ’s conclusions were supported by substantial evidence or whether the record compels a different result. *Balam-Chuc v. Mukasey*, 547 F.3d 1044, 1048 (9th Cir. 2008).

To merit asylum relief, Oganosov has to show that he is a “refugee.” 8 U.S.C. § 1158(b)(1). “A refugee is one who is ‘unable or unwilling to avail himself or herself of the protection of [his or her native] country because of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.’” *Karapetyan v. Mukasey*, 543 F.3d 1118, 1125 (9th Cir. 2008) (quoting 8 U.S.C. § 1001(a)(42)(A)). The IJ found that Oganosov was not persecuted on account of a protected ground. Oganosov disagrees, arguing that he was persecuted because he is an Azerbaijan-born ethnic Armenian. For support, Oganosov points to an ethnic slur uttered during a physical confrontation between his son and a military officer. *See Gafoor v. INS*, 231 F.3d 645, 650-52 (9th Cir. 2000).¹ However, Oganosov also admitted that all Armenians who seek to avoid conscription, not just refugees from

¹The mixed motive analysis employed in *Gafoor* has been superseded by statute. *See Parussimova v. Mukasey*, 533 F.3d 1128, 1133-36 (9th Cir. 2008). Nevertheless, this case was filed prior to the REAL ID Act, and thus the prior case law applies.

Azerbaijan, were subject to the same mistreatment and extortion. As such, the record does not compel us to overturn the IJ's finding.

Oganesov also seeks withholding of removal and CAT relief. The former fails on the same grounds as the asylum claim. *See Hanna v. Keisler*, 506 F.3d 933, 939-40 (9th Cir. 2007) (“To qualify for withholding of removal, [a petitioner] must show that it is more likely than not that his life or freedom would be threatened . . . on account of his race, religion, nationality, membership in a particular social group, or political opinion.”). As to the latter, the argument was not developed and is forfeited. *See Fed. R. App. P. 28(a)(9)(A); Castro-Perez v. Gonzales*, 409 F.3d 1069, 1072 (9th Cir. 2005) (failure to specifically raise CAT claim on appeal resulted in waiver).

PETITION DENIED.