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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CLEYCE MIGUEL REYES-REYES,

Petitioner,

v.

ERIC H. HOLDER Jr., Attorney General,

Respondent.

No. 05-72834

Agency No. A072-131-760

MEMORANDUM\*

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

Argued and Submitted May 7, 2009  
San Francisco, California

Before: HAWKINS and TALLMAN, Circuit Judges, and SINGLETON,\*\* Senior  
District Judge.

Petitioner Cleyce Miguel Reyes-Reyes (“Reyes-Reyes”) seeks review of a  
Board of Immigration Appeals’ (“BIA”) decision denying his application for asylum  
and withholding of deportation. Reyes-Reyes was a partial owner of a company that

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\* This disposition is not appropriate for publication and is not precedent  
except as provided by Ninth Circuit Rule 36-3.

\*\* The Honorable James K. Singleton, United States District Judge for  
the District of Alaska, sitting by designation.

was targeted by the terrorist organization Sendero Luminoso (“Shining Path”). Although finding his testimony credible, the BIA concluded that Shining Path did not target Reyes-Reyes and his partners on account of a protected ground or, alternatively, that he did not establish that Shining Path was a group the Peruvian government was unable or unwilling to control during the relevant time frame (1989-1990). We deny the petition on the latter ground.

To qualify for asylum, the source of an applicant’s persecution must be either a state actor or persons or groups that the government is unwilling or unable to control. *See Avetova-Elisseva v. INS*, 213 F.3d 1192, 1196 (9th Cir. 2000). Reyes-Reyes bears the burden of establishing this factor. 8 C.F.R. § 208.13(a). In cases of non-governmental persecution, we “consider whether an applicant reported the incidents to police, because in such cases a report of this nature may show governmental inability to control the actors.” *Baballah v. Ashcroft*, 367 F.3d 1067, 1078 (9th Cir. 2004); *see also Castro-Perez v. Gonzales*, 409 F.3d 1069, 1072 (9th Cir. 2005) (failure to report non-governmental persecution due to subjective belief that police would do nothing did not establish that government was unwilling or unable to control persecutors).

Reyes-Reyes did not report any of Shining Path’s attacks or threats to the police, nor did he present sufficient evidence that to do so would have been futile or

resulted in his further abuse. *See Ornelas-Chavez v. Gonzales*, 458 F.3d 1052, 1058 (9th Cir. 2006) (holding that to obtain relief, an applicant who suffered past persecution “at the hands of private parties the government is unwilling or unable to control need not have reported that persecution to the authorities if he can *convincingly establish* that doing so would have been futile or have subjected him to further abuse” (emphasis added)). Instead, the country conditions evidence presented by Reyes-Reyes post-dated the attacks of which he complains by several years.

Although Reyes-Reyes argues that the BIA could have taken administrative notice of country conditions in Peru during the relevant time frame, the BIA does not abuse its discretion by *failing* to do so when such relief is not requested. *See Fisher v. INS*, 79 F.3d 955, 963 (9th Cir. 1996) (en banc); *Liu v. Waters*, 55 F.3d 421, 427 (9th Cir. 1995) (the BIA is “not required independently to take administrative notice of [country] conditions”). Thus, on the limited record evidence before it, the BIA’s decision that Reyes-Reyes did not bear his burden of proving the government was unable or unwilling to control Shining Path in 1989-1990 is supported by substantial evidence.

**PETITION DENIED.**