FILED

MAY 22 2009

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UBALDO SONTAY-SANTAY, Petitioner, v. ERIC H. HOLDER, Jr., Attorney General, Respondent.	No. 06-73448 Agency No. A096-163-554 MEMORANDUM*

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

Submitted May 12, 2009**

Before: PREGERSON, CANBY, and BERZON, Circuit Judges.

Ubaldo Sontay-Santay, a native and citizen of Guatemala, petitions for review of the Board of Immigration Appeals' order dismissing his appeal from an immigration judge's ("IJ") decision denying his 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).

JC/Research

withholding of removal, and protection under the Convention Against Torture ("CAT"). We have jurisdiction under 8 U.S.C. § 1252. Reviewing for substantial evidence, *Nahrvani v. Gonzales*, 399 F.3d 1148, 1151 (9th Cir. 2005), we deny the petition for review.

Substantial evidence supports the IJ's conclusion that Sontay-Santay failed to establish past persecution. *See id*. at 1153-54 (record did not compel conclusion that threats petitioner received constituted persecution); *see also Movsisian v. Ashcroft*, 395 F.3d 1095, 1097 (9th Cir. 2005) ("[F]orced conscription or punishment for evasion of military duty generally does not constitute persecution on account of a protected ground."). Substantial evidence also supports the IJ's conclusion that Sontay-Santay failed to establish he has a well-founded fear of persecution. *See Aruta v. INS*, 80 F.3d 1389, 1395-96 (9th Cir. 1996) (petitioner's well-founded fear of persecution was undermined because similarly situated family member remained in country of origin unharmed); *see also Nagoulko v. INS*, 333 F.3d 1012, 1018 (9th Cir. 2003) (declining to credit speculative future persecution claim). Accordingly, Sontay-Santay's asylum claim fails.

Because Sontay-Santay failed to demonstrate he was eligible for asylum, he necessarily failed to satisfy the more stringent standard for withholding of removal. *See Nahrvani*, 399 F.3d at 1154.

Substantial evidence also supports the agency's denial of CAT relief because Sontay-Santay failed to show it was more likely than not that he would be tortured if he returned to Guatemala. *See id.*

PETITION FOR REVIEW DENIED.