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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>MARKUS EFFENDI,</p> <p style="text-align: center;">Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p style="text-align: center;">Respondent.</p>
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No. 06-70401

Agency No. A095-634-647

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.

Markus Effendi, a native and citizen of Indonesia, petitions for review of the Board of Immigration Appeals' ("BIA") order dismissing an appeal from an immigration judge's decision denying his application for asylum, withholding of

* 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).

removal, and relief under the Convention Against Torture (“CAT”). We have jurisdiction pursuant to 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 grant in part the petition for review.

The record does not compel the conclusion that changed or extraordinary circumstances excused Effendi’s untimely filed asylum application. *See* 8 C.F.R. §§ 208.4(a)(4), (5); *Ramadan v. Gonzales*, 479 F.3d 646, 649-50 (9th Cir. 2007) (per curiam). Accordingly, we deny the petition as to the asylum claim.

Substantial evidence supports the agency’s determination that Effendi is not entitled to CAT relief because Effendi did not present evidence demonstrating a clear probability that he would be tortured by, or with the acquiescence of, public officials or persons acting in an official capacity if he returns to Indonesia. *See Wakkary v. Holder*, 558 F.3d 1049, 1067-68 (9th Cir. 2009).

The BIA erred in holding that disfavored group analysis was inapplicable to Effendi’s withholding of removal claim, so we remand for reconsideration of this claim. *See INS v. Ventura*, 537 U.S. 12, 16-18 (2002) (per curiam); *Wakkary*, 558 F.3d at 1067.

**PETITION FOR REVIEW DENIED in part; GRANTED in part;
REMANDED.**