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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>JIMMY SUOTH,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p>Respondent.</p>

No. 06-71254

Agency No. A078-020-448

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.

Jimmy Suoth, a native and citizen of Indonesia, petitions for review of the Board of Immigration Appeals' ("BIA") order dismissing his appeal from an immigration judge's ("IJ") decision denying his application for withholding of removal and relief under the Convention Against Torture ("CAT"). We have

* 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).

jurisdiction under 8 U.S.C. § 1252. We review for substantial evidence, *INS v. Elias-Zacarias*, 502 U.S. 478, 481 n.1 (1992), and deny in part and grant in part the petition for review.

The agency denied Suoth's asylum claim as time-barred. Suoth does not challenge this finding in his opening brief.

Substantial evidence supports the IJ's finding that Suoth failed to establish past persecution by persons the Indonesian government was unable or unwilling to control. *See Castro-Perez v. Gonzales*, 409 F.3d 1069, 1072 (9th Cir. 2005).

The agency, however, failed to address Suoth's contention that he established a clear probability of future persecution because he is a member of a disfavored group. *See Wakkary v. Holder*, 558 F.3d 1049, 1068-69 (9th Cir. 2009); *Sagaydak v. Gonzales*, 405 F.3d 1035, 1040 (9th Cir. 2005) ("the BIA [is] not free to ignore arguments raised by a petitioner."). We therefore remand for the agency to address Suoth's claim in the first instance. *See id.*; *see also INS v. Ventura*, 537 U.S. 12, 16-18 (2002) (per curiam).

Suoth does not raise any challenge to the agency's denial of CAT relief. *See Martinez-Serrano v. INS*, 94 F.3d 1256, 1259-60 (9th Cir. 1996).

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