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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>FENSONG ZHU,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p>Respondent.</p>
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No. 05-72337

Agency No. A075-842-310

MEMORANDUM\*

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

Argued and Submitted May 8, 2009  
Pasadena, California

Before: HALL, RYMER and SILVERMAN, Circuit Judges.

Fensong Zhu petitions for review of the Board of Immigration Appeals’ decision affirming the Immigration Judge’s denial of his requests for asylum, withholding of removal, and protection under the Convention Against Torture. We review the IJ’s credibility findings for substantial evidence. *Gui v. INS*, 280 F.3d 1217, 1225 (9th Cir. 2002). We grant the petition because the IJ did not allow

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

Zhu's lawyer to cross-examine the government's key witness – the questioned documents examiner who issued a report opining that Zhu's documents were fraudulent. Cross-examination should have been allowed. *See* 8 U.S.C. § 1229a(b)(4)(B) (providing that an alien in a removal hearing must have “a reasonable opportunity . . . to cross-examine witnesses presented by the government”); *Saidane v. INS*, 129 F.3d 1063, 1064-65 (9th Cir. 1997). The witness was available by telephone, and, contrary to the government's assertions, Zhu *did* object to the IJ's ruling at the appropriate times and noted specific deficiencies with the report. The result of this error is that the adverse credibility finding was procedurally flawed.

We remand for a new hearing. *See Soto-Alarte v. Holder*, 555 F.3d 1089, 1096 (9th Cir. 2009).

PETITION FOR REVIEW GRANTED; REMANDED.