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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>AME ROKOTUIBAU TOLOI; et al.,</p> <p>Petitioners,</p> <p>v.</p> <p>ERIC H. HOLDER Jr., Attorney General,</p> <p>Respondent.</p>
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No. 05-72920

Agency Nos. A095-570-033
A095-570-034
A095-570-035

MEMORANDUM *

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

Submitted June 8, 2009**
San Francisco, California

Before: TROTT, McKEOWN, and IKUTA, Circuit Judges.

The Immigration Judge’s determination that ToloI had firmly resettled in South Africa is supported by substantial evidence. By virtue of his marriage to a South African woman, ToloI was offered permanent residence status. The IJ determined that ToloI did not establish that he remained in South Africa only as

* 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).

long as was necessary to arrange onward travel, or that South Africa “substantially and consciously restricted” the conditions of his residence, and this determination is supported by substantial evidence. *See Cheo v. INS*, 162 F.3d 1227, 1229 (9th Cir. 1998); 8 C.F.R. § 208.15(a).

For purposes of Toloï’s application for withholding of removal, substantial evidence also supports the IJ’s rejection of Toloï’s claim that it is “more likely than not” that Toloï will be persecuted on account of a protected ground upon his return to Fiji. *INS v. Stevic*, 467 U.S. 407, 429–30 (1984). Toloï’s superiors accepted his departure from the military and Toloï received payment in lieu of his pension; this discharge supports the IJ’s determination that Toloï failed to establish that the military would still have an interest in Toloï if he returned to Fiji.

We disagree with Toloï’s contention that the IJ used incorrect legal standards in determining his eligibility for asylum and withholding of removal. The IJ determined that Toloï was firmly resettled in South Africa, which is a statutory bar to a grant of asylum. 8 U.S.C. § 1158(b)(2)(vi). The IJ applied the correct standard for withholding of removal, which is a more stringent standard than that required for asylum. *Stevic*, 464 U.S. at 428 (rejecting the assertion that “every alien who qualifies as a ‘refugee’ under the statutory definition is also entitled to a withholding of deportation”).

Finally, ToloI abandoned his claim for relief under the Convention Against Torture before the IJ, and therefore that claim was not exhausted. *See Barron v. Ashcroft*, 358 F.3d 674, 678 (9th Cir. 2004) (holding that we are barred for lack of subject-matter jurisdiction “from reaching the merits of a legal claim not presented in administrative proceedings below”).

AFFIRMED.