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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>DAW KYU KYU SUN,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER Jr., Attorney General,</p> <p>Respondent.</p>
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No. 06-73881

Agency No. A075-682-161

MEMORANDUM\*

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

Submitted July 14, 2009\*\*

Before: SCHROEDER, THOMAS, and WARDLAW, Circuit Judges.

Daw Kyu Kyu Sun, a native and citizen of Burma, petitions for review of the Board of Immigration Appeals' ("BIA") order dismissing her appeal from an immigration judge's ("IJ") decision denying her application for asylum. We have

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\* 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 the agency’s legal determinations de novo, and factual findings for substantial evidence, *Wakkary v. Holder*, 558 F.3d 1049, 1056 (9th Cir. 2009), and we grant the petition for review.

Where a petitioner is eligible for withholding of removal “it follows that [petitioner] is also eligible for asylum under the less stringent well-founded fear of persecution standard.” *See Khunaverdians v. Mukasey*, 548 F.3d 760, 767 (9th Cir. 2008). Therefore, the BIA erred by concluding that Sun was ineligible for asylum without taking into account that the IJ granted withholding of removal on the ground that Sun faced a clear probability of persecution based upon her failure to return to Burma within the limitations of her passport.

Accordingly, we grant the petition for review, and remand for the exercise of the Attorney General’s discretion with respect to Sun’s asylum claim. *See id.*

The government shall bear the costs for this petition for review.

**PETITION FOR REVIEW GRANTED; REMANDED.**