

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JUL 23 2009

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

DENNY ADRIE PASCOAL,

Petitioner,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 06-72737

Agency No. A078-020-320

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.

Denny Adrie Pascoal, 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 decision denying his application for withholding of removal

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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).

and relief under the Convention Against Torture (“CAT”). We have 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 we deny in part and grant in part the petition for review.

The BIA denied Pascoal’s asylum claim as time-barred. Pascoal does not challenge this finding in his opening brief.

Substantial evidence supports the BIA’s finding that Pascoal failed to establish he suffered past persecution in Indonesia. *See Hoxha v. Ashcroft*, 319 F.3d 1179, 1182 (9th Cir. 2003). The BIA, however, erred by refusing to consider the evidence regarding whether Pascoal belonged to a disfavored group in assessing his withholding of removal claim, so we remand for reconsideration of this claim. *See Wakkary v. Holder*, 558 F.3d 1049, 1068-69 (9th Cir. 2009); *INS v. Ventura*, 537 U.S. 12, 16-18 (2002) (per curiam).

Substantial evidence supports the BIA’s denial of CAT relief because Pascoal did not demonstrate that it is more likely than not he would be tortured if returned to Indonesia. *See Singh v. Gonzales*, 439 F.3d 1100, 1113 (9th Cir. 2006).

The parties shall bear their own costs on appeal.

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