

AUG 31 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>MUSSIE ESTIFANOS,</p> <p style="text-align: center;">Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER Jr., Attorney General,</p> <p style="text-align: center;">Respondent.</p>

Nos. 08-70844
08-71903

Agency No. A099-518-195

MEMORANDUM*

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

Submitted August 20, 2009**

Before: WALLACE, HAWKINS, and THOMAS, Circuit Judges.

In these consolidated cases, Mussie Estifanos, a native and citizen of Ethiopia, petitions for review of the Board of Immigration Appeals’ (“BIA”) order dismissing his appeal from an immigration judge’s (“IJ”) decision denying his

* 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).

application for asylum, withholding of removal, and relief under the Convention Against Torture No. 08-70844, and the BIA order denying his motion to reopen and reconsider No. 08-71903.

In petition No. 08-70844, the government requests remand for the BIA to address in the first instance whether the IJ failed to consider the “totality of the circumstances” under the standard set forth by the REAL ID Act with respect to adverse credibility determinations, and to also address Estifanos’ due process contentions regarding the IJ’s reliance on investigative reports submitted by the government. We grant the request. *See INS v. Ventura*, 537 U.S. 12, 16 (2002) (per curiam). The court orders that Estifanos’ removal is stayed pending a decision by the BIA in this matter.

We deny as moot the petition for review of the BIA’s March 31, 2008 order denying Estifanos’ motion to reopen and reconsider.

The parties shall each bear their own costs on appeal.

No. 08-70844: PETITION FOR REVIEW GRANTED; REMANDED.

No. 08-71903: PETITION FOR REVIEW DENIED.