

SEP 28 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>MARVIN RAUL RODRIGUEZ-PAO,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER Jr., Attorney General,</p> <p>Respondent.</p>
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No. 06-75756

Agency No. A097-311-551

MEMORANDUM*

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

Submitted September 14, 2009**

Before: SILVERMAN, RAWLINSON, and CLIFTON, Circuit Judges.

Marvin Raul Rodriguez-Pao, a native and citizen of Guatemala, petitions for review of the Board of Immigration Appeals' order dismissing his appeal from an immigration judge's decision denying his application for asylum, and withholding

* 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).

of removal. Our jurisdiction is governed by 8 U.S.C. § 1252. We review for substantial evidence, *Chebchoub v. INS*, 257 F.3d 1038, 1042 (9th Cir. 2001), and we dismiss in part and deny in part the petition for review.

We lack jurisdiction to review Rodriguez-Pao's challenge to the denial of his asylum claim because he failed to exhaust it before the agency. *See Barron v. Ashcroft*, 358 F.3d 674, 678 (9th Cir. 2004).

Substantial evidence supports the agency's adverse credibility determination based on the omission from Rodriguez-Pao's declaration of his union involvement and his problems with the union, and based on internal inconsistencies in his testimony regarding the dates he was hired and fired. *See Li v. Ashcroft*, 378 F.3d 959, 962-64 (9th Cir. 2004), *see also Kaur v. Gonzales*, 418 F.3d 1061, 1067 (9th Cir. 2005). Rodriguez-Pao failed to adequately explain these discrepancies and omission when given the opportunity, *see id.* at 1066-67, and they go to the heart of his claim, *Chebchoub*, 257 F.3d at 1043. Accordingly, Rodriguez-Pao's withholding of removal claim fails.

PETITION FOR REVIEW DISMISSED in part; DENIED in part.