

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NOT FOR PUBLICATION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>FENG JIANG,</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>

No. 07-70255

Agency No. A096-056-596

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.

Feng Jiang, a native and citizen of China, petitions for review of the Board of Immigration Appeals' ("BIA") order dismissing his appeal from an immigration judge's decision denying his application for asylum, withholding of removal, and

* 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).

protection under the Convention Against Torture (“CAT”). We have jurisdiction under 8 U.S.C. § 1252. We review for substantial evidence, *Chebchoub v. INS*, 257 F.3d 1038, 1042 (9th Cir. 2001), and we deny in part and grant in part the petition for review.

Substantial evidence supports the BIA’s adverse credibility finding that Jiang’s testimony regarding the length of his wife’s arrest was internally inconsistent, *see Don v. Gonzales*, 476 F.3d 738, 741-42 (9th Cir. 2007), and Jiang failed to adequately explain this inconsistency when given the opportunity, *see Kaur v. Gonzales*, 418 F.3d 1061, 1066-67 (9th Cir. 2005). Accordingly, in the absence of credibility testimony, Jiang’s asylum and withholding of removal claims fail. *See Farah v. Ashcroft*, 348 F.3d 1153, 1156 (9th Cir. 2003).

We remand Jiang’s CAT claim for the BIA to address it in the first instance. *See Sagaydak v. Gonzales*, 405 F.3d 1035, 1040 (9th Cir. 2005) (“The BIA [is] not free to ignore arguments raised by a petitioner.”).

Each party to bear its own costs.

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