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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

SERGIO DE JESUS VALENZUELA
LUNA,

Petitioner,

v.

ERIC H. HOLDER Jr., Attorney General,

Respondent.

No. 06-75657

Agency No. A070-958-026

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.

Sergio De Jesus Valenzuela Luna, a native and citizen of Guatemala,
petitions for review of the Board of Immigration Appeals' order dismissing 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).

appeal from an immigration judge's decision denying his application for asylum, withholding of removal, and relief under the Convention Against Torture ("CAT"). We have jurisdiction under 8 U.S.C. § 1252. We review for substantial evidence, *Don v. Gonzales*, 476 F.3d 738, 741 (9th Cir. 2007), and we deny the petition for review.

Substantial evidence supports the agency's adverse credibility determination because the inconsistencies between Valenzuela Luna's declaration and his testimony regarding his location when guerrillas cut his hand and the number of incidents of persecution he suffered, are material discrepancies that go to the heart of his claim. *See id.* at 742-43. In addition, substantial evidence supports the agency's credibility determination based on an inconsistency between Valenzuela Luna's testimony and his asylum interview statements regarding whether he was hospitalized for his injuries. *See Chebchoub v. INS*, 257 F.3d 1038, 1043 (9th Cir. 2001). In the absence of credible testimony, Valenzuela Luna's asylum and withholding of removal claims fail. *See Farah v. Ashcroft*, 348 F.3d 1153, 1156 (9th Cir. 2003).

Because Valenzuela Luna's CAT claim is based on testimony the agency found not credible, and he points to no other evidence to show it is more likely

than not he would be tortured if returned to Guatemala, his CAT claim fails. *See id.* at 1156-57.

PETITION FOR REVIEW DENIED.