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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>RAFIK VALODOVICH PACHAIAN,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER Jr., Attorney General,</p> <p>Respondent.</p>
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No. 06-73306

Agency No. A079-521-289

MEMORANDUM *

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

Submitted October 13, 2009**

Before: B. FLETCHER, LEAVY, and RYMER, Circuit Judges.

Rafik Valodovich Pachaian, a native of Armenia and citizen of Russia,
petitions for review of the Board of Immigration Appeals' order affirming an

* 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).

immigration judge's decision denying his application for asylum, withholding of removal, and protection under the Convention Against Torture ("CAT"). We have jurisdiction under 8 U.S.C. § 1252. We review de novo due process claims, *Rivera v. Mukasey*, 508 F.3d 1271, 1274-75 (9th Cir. 2007), and review for substantial evidence factual findings, *Don v. Gonzales*, 476 F.3d 738, 741 (9th Cir. 2007). We deny the petition for review.

The record does not compel reversal of the agency's adverse credibility determination because Pachaian's inconsistent explanations about his reasons for leaving Russia and coming to the United States deprive his claim of the requisite "ring of truth." *Kaur v. Gonzales*, 418 F.3d 1061, 1067 (9th Cir. 2005). In the absence of credible testimony, Pachaian failed to demonstrate eligibility for asylum or withholding of removal. *See Farah v. Ashcroft*, 348 F.3d 1153, 1156 (9th Cir. 2003).

Because Pachaian's CAT claim is based on the same evidence the agency found not credible, and he points to no further evidence to show it is more likely than not he would be tortured if returned to Russia, his CAT claim fails. *See id.* at 1157.

Finally, Pachaian's due process claim fails. *See Lata v. INS*, 204 F.3d 1241, 1246 (9th Cir. 2000) (no due process violation where no error and no prejudice).

PETITION FOR REVIEW DENIED.

Judge B. Fletcher dissents.