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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>VICTOR HUGO RIVAS-BARRIOS,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER Jr., Attorney General,</p> <p>Respondent.</p>
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No. 06-74202

Agency No. A079-155-888

MEMORANDUM\*

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

Submitted November 17, 2009\*\*

Before: ALARCÓN, TROTT, and TASHIMA, Circuit Judges.

Victor Hugo Rivas-Barrios, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals’ order dismissing his appeal from an immigration judge’s (“IJ”) decision denying his application for asylum,

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\* 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).

withholding of removal, and protection under the Convention Against Torture (“CAT”). Our jurisdiction is governed by 8 U.S.C. § 1252. We review for substantial evidence factual findings, *Husyev v. Mukasey*, 528 F.3d 1172, 1177 (9th Cir. 2008), and we review de novo due process claims, *Ngongo v. Ashcroft*, 397 F.3d 821, 823 (9th Cir. 2005). We deny in part and dismiss in part the petition for review.

The record does not compel the conclusion that Rivas-Barrios established changed or extraordinary circumstances to excuse his late filed asylum application. *See* 8 C.F.R. § 1208.4(a)(4),(5). Accordingly, Rivas-Barrios’s asylum claim fails.

Rivas-Barrios’ testimony that he was attacked on account of his religion was inconsistent with his declaration and the police report which did not mention a religious motivation and instead indicated the attack occurred in response to Rivas-Barrios’ previous confrontation with his attackers regarding an incident of sexual abuse against his son. Because this incident is central to his claim, substantial evidence supports the IJ’s adverse credibility determination. *See Goel v. Gonzales*, 490 F.3d 735, 739 (9th Cir. 2007). In the absence of credible testimony establishing persecution on account of a protected ground, Rivas-Barrios’ withholding of removal claim fails. *See Farah v. Ashcroft*, 348 F.3d 1153, 1156 (9th Cir. 2003).

Because Rivas-Barrios' CAT claim is based on the testimony the IJ found not credible, and Rivas-Barrios points to no other evidence to show it is more likely than not he would be tortured if returned to Mexico, his CAT claim fails. *See id.* at 1156-57.

Rivas-Barrios' due process contention regarding the IJ's refusal to permit his witness to testify fails. *See Ngongo*, 397 F.3d at 823-24.

We lack jurisdiction to review the IJ's grant of voluntary departure, *see* 8 U.S.C. §§ 1229c(f), 1252(a)(2)(B)(I), and therefore we dismiss the petition as to Rivas-Barrios' voluntary departure request.

**PETITION FOR REVIEW DENIED in part; DISMISSED in part.**