

NOV 30 2009

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CESAR ANTONIO FAJARDO PENEА,

Petitioner,

v.

ERIC H. HOLDER Jr., Attorney General,

Respondent.

No. 07-71888

Agency No. A074-818-277

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.

Cesar Antonio Fajardo Penea, 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

* 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. We have jurisdiction under 8 U.S.C. § 1252. We review for substantial evidence, *Nagoulko v. INS*, 333 F.3d 1012, 1015 (9th Cir. 2003), and we deny the petition for review.

Substantial evidence supports the agency's conclusion that the three encounters Penea had with the guerillas in Guatemala did not amount to past persecution. *See Lim v. INS*, 224 F.3d 929, 936 (9th Cir. 2000) (threats standing alone only constitute past persecution when they are so menacing as to cause actual suffering or harm). Substantial evidence also supports the agency's conclusion that Penea's failed to establish that his fear upon returning to Guatemala is objectively reasonable. *See Nagoulko*, 333 F.3d at 1018.

Because Penea has not met the standard for asylum, he necessarily cannot meet the more stringent standard for withholding of removal. *See Zehatye v. Gonzales*, 453 F.3d 1182, 1190 (9th Cir. 2006).

PETITION FOR REVIEW DENIED.