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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>ARMEN APELYAN,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER Jr., Attorney General,</p> <p>Respondent.</p>
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No. 05-77165

Agency No. A097-115-644

MEMORANDUM\*

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

Argued and Submitted December 8, 2009  
San Francisco, California

Before: SCHROEDER, LUCERO ,\*\* and CALLAHAN, Circuit Judges.

Armen Apelyan, a native and citizen of Armenia, petitions for review of the Board of Immigration Appeals’s (“BIA”) decision upholding the adverse credibility finding of the Immigration Judge (“IJ”), and the denial of petitioner’s

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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 Honorable Carlos F. Lucero, U.S. Circuit Judge for the Tenth Circuit, sitting by designation.

application for asylum, withholding of removal and relief under the Convention Against Torture (“CAT”).

The BIA affirmed because both petitioner’s written application and hearing testimony, that he was imprisoned in 1998 on suspicion of participation in a plot for an assassination, were inconsistent with the historical record that the assassination did not occur until 2000. The inconsistency went to the heart of his claim, as our law requires in order to support an adverse credibility determination. *Li v. Ashcroft*, 378 F.3d 959, 964 (9th Cir. 2004).

When confronted at the hearing with the inconsistency, petitioner said there had been a mistake in the translations and that he meant to say he was falsely arrested for suspected planning, not participation. Neither the IJ nor the BIA accepted the explanation and there was no compelling reason for them to do so. *Don v. Gonzales*, 476 F.3d 738, 742 (9th Cir. 2007).

The petition for review is **DENIED**.