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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

PATRICK JEFFRY TAN,

Petitioner,

v.

ERIC H. HOLDER Jr., Attorney General,

Respondent.

No. 06-75503

Agency No. A096-491-202

MEMORANDUM*

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

Submitted February 16, 2010**

Before: FERNANDEZ, GOULD, and M. SMITH, Circuit Judges.

Patrick Jeffry Tan, a native and citizen of Indonesia, 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 and

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is 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, *Hoxha v. Ashcroft*, 319 F.3d 1179, 1182 n. 4 (9th Cir. 2003), and we deny the petition for review.

The IJ denied Tan's asylum application claim as time-barred. Tan does not challenge this finding in his opening brief.

Substantial evidence supports the IJ's finding that Tan failed to establish the harms he experienced on account of his homosexuality, Chinese ethnicity and Christian religion, even considered cumulatively, amounted to past persecution. *See id.* at 1182. Substantial evidence also supports the IJ's finding that Tan failed to demonstrate a clear probability of future persecution because, even if the disfavored group analysis set forth in *Sael v. Ashcroft*, 386 F.3d 922, 927-29 (9th Cir. 2004) applies to him, he did not establish the requisite individualized risk of persecution. *See Hoxha*, 319 F.3d at 1184-85. Accordingly, Tan's withholding of removal claim fails.

PETITION FOR REVIEW DENIED.
