

APR 14 2010

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

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MIKHAIL IGOREVICH SAVIN,

Petitioner,

v.

ERIC H. HOLDER Jr., Attorney General,

Respondent.

No. 05-75015

Agency No. A095-302-168

MEMORANDUM*

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

Submitted April 5, 2010**

Before: RYMER, McKEOWN, and PAEZ, Circuit Judges.

Mikhail Igorevich Savin, a native and citizen of Uzbekistan, petitions for review of the Board of Immigration Appeals' ("BIA") order dismissing his appeal from an immigration judge's ("IJ") decision denying his application for asylum,

* 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, and relief under the Convention Against Torture (“CAT”). We have jurisdiction under 8 U.S.C. § 1252. We review for substantial evidence the BIA’s adverse credibility finding. *Don v. Gonzales*, 476 F.3d 738, 741 (9th Cir. 2007). We deny the petition for review.

Savin alleges that he was hospitalized for one month after police beat and tortured him. The BIA found Savin not credible based on a government report that stated the surgery department of the emergency center was closed at the time of Savin’s alleged injuries and it did not operate on, or treat anyone with his alleged diagnosis. Substantial evidence supports the adverse credibility determination because the credibility of Savin’s alleged injuries and treatment go to the heart of his claim. *See Desta v. Ashcroft*, 365 F.3d 741, 745 (9th Cir. 2004). We decline to consider Savin’s argument that the IJ misinterpreted the report because he did not raise this argument before the BIA. *See Barron v. Ashcroft*, 358 F.3d 674, 677 (9th Cir. 2004). In the absence of credible testimony, Savin’s asylum and withholding of removal claims fail. *See Farah v. Ashcroft*, 348 F.3d 1153, 1156 (9th Cir. 2003).

Because Savin’s CAT claim is based on the testimony the agency found not credible, and he points to no evidence showing it is more likely than not he will be tortured in Uzbekistan, his CAT claim also fails. *Id.* at 1156-57.

PETITION FOR REVIEW DENIED.