

APR 14 2010

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>RICKY RICHARDO LUMENTUT, a.k.a. Ricky Richardo Lumentut,</p> <p style="text-align: center;">Petitioner,</p> <p style="text-align: center;">v.</p> <p>ERIC H. HOLDER Jr., Attorney General,</p> <p style="text-align: center;">Respondent.</p>
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No. 07-74777

Agency No. A078-020-219

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.

Ricky Richardo Lumentut, a native and citizen of Indonesia, petitions for review of the Board of Immigration Appeals' order dismissing his appeal from an immigration judge's decision denying his application for asylum, withholding of

* 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).

removal, and relief under the Convention Against Torture (“CAT”). We have jurisdiction under 8 U.S.C. § 1252. We review for substantial evidence the agency’s factual findings. *Zehatye v. Gonzales*, 453 F.3d 1182, 1184-85 (9th Cir. 2006). We deny the petition for review.

The record does not compel the conclusion that Lumentut demonstrated changed or extraordinary circumstances to excuse his untimely asylum application. *See* 8 C.F.R. § 1208.4(a)(4),(5).

Substantial evidence supports the agency’s adverse credibility determination because the discrepancies between Lumentut’s testimony and his written statement regarding where, how, and the number of times he was attacked go to the heart of his claim of persecution. *See Li v. Ashcroft*, 378 F.3d 959, 962 (9th Cir. 2004). In the absence of credible testimony, Lumentut’s withholding of removal claim fails. *See Farah v. Ashcroft*, 348 F.3d 1153, 1156 (9th Cir. 2003).

Lumentut’s does not raise any arguments in his opening brief regarding the agency’s denial of his CAT claim. *See Martinez-Serrano v. INS*, 94 F.3d 1256 (9th Cir. 1996) (issues not supported by argument are deemed waived).

PETITION FOR REVIEW DENIED.