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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

DAMDINDORJ OYUNBAATAR,

Petitioner,

v.

ERIC H. HOLDER Jr., Attorney General,

Respondent.

No. 07-71823

Agency No. A098-510-667

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.

Damdindorj Oyunbaatar, a native and citizen of Mongolia, 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,

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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 panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

withholding of removal, and protection under the Convention Against Torture. We have jurisdiction under 8 U.S.C. § 1252. We review for substantial evidence, *Tekle v. Mukasey*, 533 F.3d 1044, 1051 (9th Cir. 2008), and we grant the petition for review and remand.

The IJ found Oyunbaatar not credible based on her determination that Oyunbaatar submitted a fraudulent police citation. Because the IJ's finding was based on her improper speculation, substantial evidence does not support the agency's adverse credibility determination. *See Shah v. INS*, 220 F.3d 1062, 1071 (9th Cir. 2000) (BIA engaged in impermissible speculation and conjecture in determining evidence was fraudulent where record contained no evidence of fraud).

Accordingly, we grant the petition for review, and remand Oyunbaatar's claims for further proceedings on an open record. *See Soto-Olarte v. Holder*, 555 F.3d 1089, 1093-96 (9th Cir. 2009); *see also INS v. Ventura*, 537 U.S. 12, 16-18 (2002) (per curiam).

**PETITION FOR REVIEW GRANTED; REMANDED.**