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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>SUKETO SURENDRA DESAI; et al.,</p> <p style="text-align: center;">Petitioners,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p style="text-align: center;">Respondent.</p>
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No. 06-73089

Agency Nos. A070-536-970
 A070-536-969
 A070-536-967

MEMORANDUM*

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

Submitted June 29, 2010**

Before: ALARCÓN, LEAVY, and GRABER, Circuit Judges.

Suketo Surendra Desai, and his famly, natives and citizens of India, petition for review of the Board of Immigration Appeals’ (“BIA”) order dismissing their appeal from an immigration judge’s decision denying their application for asylum, withholding of removal, and relief under the Convention Against Torture (“CAT”).

* 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).

We have jurisdiction under 8 U.S.C. § 1252. We review for substantial evidence an adverse credibility determination, *Li v. Ashcroft*, 378 F.3d 959, 962 (9th Cir. 2004), and we deny the petition for review.

Substantial evidence supports the agency's adverse credibility determination based on inconsistencies in the record regarding the timing and circumstances of Desai's brother's death. *See id.* at 964 (we are bound to accept an adverse credibility finding as long as one of the identified grounds is supported by substantial evidence and goes to the heart of the petitioner's claim). Desai was provided with an adequate opportunity to explain these inconsistencies, but failed to do so. *See Kaur v. Gonzales*, 418 F.3d 1061, 1066-67 (9th Cir. 2005).

In the absence of credible testimony, Desai's asylum and withholding of removal claims fail. *See Farah v. Ashcroft*, 348 F.3d 1153, 1156 (9th Cir. 2003).

Because Desai's CAT claim is based on the same testimony found to be not credible, and he points to no other evidence that shows it is more likely than not he will be tortured in India, his CAT claim also fails. *See id.* at 1156-57.

PETITION FOR REVIEW DENIED.