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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>NOEL ANTONIO GUTIERREZ,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p>Respondent.</p>
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No. 07-75102

Agency No. A078-104-704

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.

Noel Antonio Gutierrez, a native and citizen of Nicaragua, petitions for review of the Board of Immigration Appeals’ (“BIA”) order dismissing his appeal from an immigration judge’s decision denying his application for withholding of removal. We have jurisdiction under 8 U.S.C. § 1252. We review de novo the

* 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).

agency's legal determinations and we review for substantial evidence factual findings. *Tekle v. Mukasey*, 533 F.3d 1044, 1051 (9th Cir. 2008). We deny the petition.

Gutierrez contends that he established a clear probability of future persecution based solely on having suffered past persecution. Substantial evidence supports the BIA's determination that Gutierrez failed to establish that the harm he suffered rose to the level of persecution. *See Hoxha v. Ashcroft*, 319 F.3d 1179, 1182 (9th Cir. 2003) (harassment and one beating unconnected with any particular threat did not compel finding of past persecution); *see also Prasad v. INS*, 47 F.3d 336, 340 (9th Cir. 1995) ("Although a reasonable factfinder *could* have found this incident sufficient to establish past persecution, we do not believe that a factfinder would be compelled to do so."). Further, the record does not compel the conclusion that Gutierrez has a clear probability of future harm. *See Hoxha*, 319 F.3d at 1184-85. Because Gutierrez does not otherwise challenge the agency's finding, his withholding of removal claim fails. *See Lim*, 224 F.3d at 938.

PETITION FOR REVIEW DENIED.