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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>TJIOE SIM LIM; 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. 07-73017

Agency Nos. A096-054-796  
A096-054-797  
A096-054-798

MEMORANDUM\*

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

Submitted July 19, 2010\*\*

Before: B. FLETCHER, REINHARDT, and WARDLAW, Circuit Judges.

Tjioe Sim Lim, and her family, natives and citizens of Indonesia, 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 protection under the Convention Against Torture

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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).

(“CAT”). Our jurisdiction is governed by 8 U.S.C. § 1252. We review for substantial evidence, *Wakkary v. Holder*, 558 F.3d 1049, 1056 (9th Cir. 2009), and we deny in part grant in part the petition for review.

The record does not compel the conclusion that petitioners demonstrated extraordinary circumstances to excuse their untimely asylum application. See 8 C.F.R. § 1208.4(a)(5). Accordingly, we deny the petition with respect to petitioners’ asylum claim.

The BIA found the incidents of harm petitioners suffered, including the incident in which native Indonesian Muslims attempted to rape Lim and attacked and beat Lim and her husband, did not rise to the level of persecution. Substantial evidence does not support this finding. See *Ruano v. Ashcroft*, 301 F.3d 1155, 1159-61 (9th Cir. 2002) (threats accompanied by close confrontation may constitute past persecution). Accordingly, we remand the petitioners’ withholding of removal claim to the BIA for further proceedings consistent with this disposition. See *INS v. Ventura*, 537 U.S. 12, 16-18 (2002) (per curiam).

Finally, substantial evidence supports the agency’s denial of petitioners’ CAT claim because they failed to establish they would more likely than not be tortured if returned to Indonesia. See *Wakkary*, 558 F.3d at 1067-68.

Each party shall bear its own costs for this petition for review.

**PETITION FOR REVIEW DENIED in part; GRANTED in part;  
REMANDED.**