

FILED

AUG 12 2010

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

JOSE LUIS MAZARIEGOS-DELGADO,

Petitioner,

v.

ERIC H. HOLDER Jr., Attorney General,

Respondent.

No. 06-75029

Agency No. A076-341-964

ORDER

Before: BEEZER, TROTT, and BYBEE, Circuit Judges.

Mazariegos-Delgado's petition for panel rehearing is granted in part.

The memorandum disposition filed on January 21, 2010 is withdrawn. A replacement memorandum disposition is being filed concurrently with this order.

No further filing shall be accepted in this closed case.

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ERIC H. HOLDER Jr., Attorney General,

Respondent.

No. 06-75029

Agency No. A076-341-964

MEMORANDUM*

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

Submitted January 11, 2010**

Before: BEEZER, TROTT, and BYBEE, Circuit Judges.

Jose Luis Mazariegos-Delgado, a native and citizen of Guatemala, 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,

* 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 relief under the Convention Against Torture (“CAT”). Our jurisdiction is governed under 8 U.S.C. § 1252. We review for substantial evidence, *INS v. Elias-Zacarias*, 502 U.S. 478, 481 n.1 (1992), and we dismiss in part and deny in part the petition for review.

We lack jurisdiction to review Mazariegos-Delgado’s contention that he qualifies for humanitarian asylum because he failed to exhaust this claim before the agency. *See Barron v. Ashcroft*, 358 F.3d 674, 678 (9th Cir. 2004).

Substantial evidence supports the IJ’s conclusion that Mazariegos-Delgado did not show that his problems with Rudy Vega and his family, or Mazariegos-Delgado’s problems with the political party, Union de Centro Nacional, established past persecution or a well-founded fear of future persecution on account of a protected ground. *See Cruz-Navarro v. INS*, 232 F.3d 1024, 1028-30 (9th Cir. 2000); *Molina-Morales v. INS*, 237 F.3d 1048, 1051-52 (9th Cir. 2001) (personal retribution is not persecution on account of a protected ground).

Substantial evidence also supports the IJ’s determination that, even though Mazariegos-Delgado suffered past persecution by the Guatemalan police on account of his imputed political opinion, the presumption of a well-founded fear of future persecution had been rebutted due to the change in circumstances. *See Sowe v. Mukasey*, 538 F.3d 1281, 1285-86 (9th Cir. 2008) (agency rationally construed

evidence in the record and provided a sufficiently individualized analysis of the petitioner's situation). Therefore, Mazariegos-Delgado's asylum and withholding of removal claims fail. *See Barrios v. Holder*, 581 F.3d 849, 856 (9th Cir. 2009)

Finally, substantial evidence supports the IJ's determination that Mazariegos-Delgado is not entitled to CAT protection because he failed to demonstrate that it is more likely than not that he will be tortured if returned to Guatemala. *See Hasan v. Ashcroft*, 380 F.3d 1114, 1122-23 (9th Cir. 2004).

PETITION FOR REVIEW DISMISSED in part; DENIED in part.