

SEP 24 2010

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>TERESA C. CALLEGAS; et al.,</p> <p>Petitioners,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p>Respondent.</p>

No. 08-71231

Agency Nos. A097-371-406
 A097-371-407
 A097-371-479
 A097-371-480

MEMORANDUM*

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

Submitted September 13, 2010**

Before: SILVERMAN, CALLAHAN, and N.R. SMITH, Circuit Judges.

Teresa C. Callegas, and her family, natives and citizens of Columbia, 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

* 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).

Torture (“CAT”). Our jurisdiction is governed by 8 U.S.C. § 1252. We review for substantial evidence factual findings. *Santos-Lemus v. Mukasey*, 542 F.3d 738, 742 (9th Cir. 2008). We dismiss in part and deny in part the petition for review.

Callegas failed to challenge the IJ’s finding that her asylum application was untimely before the BIA. Accordingly, her asylum claim is dismissed. *See Barron v. Ashcroft*, 358 F.3d 674, 677-78 (9th Cir. 2004) (exhaustion is mandatory and jurisdictional).

Substantial evidence supports the BIA’s finding that Callegas did not demonstrate a clear probability of persecution because she has not shown the harm her family suffered was on account of a protected ground. *See INS v. Elias-Zacarias*, 502 U.S. 478, 481-82 (1992). Moreover, her fear of future persecution was not objectively reasonable in light of the fact that her ex-husband has remained in Columbia unharmed. *See Hakeem v. INS*, 273 F.3d 812, 816 (9th Cir. 2001). Accordingly, we deny the petition as to Callegas’s withholding of removal claim.

Substantial evidence also supports the BIA’s denial of CAT relief because Callegas failed to establish it is more likely than not that she will be tortured if she returns to Colombia. *See Santos-Lemus*, 542 F.3d at 748.

We reject Callegas's contention that the BIA failed to sufficiently articulate its reasoning because it is belied by the record.

PETITION FOR REVIEW DISMISSED in part; DENIED in part.