NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

SUBURIAN PARTOGI, Petitioner, v. ERIC H. HOLDER, Jr., Attorney General, Respondent.	No. 07-75065 Agency No. A095-630-044 MEMORANDUM[*]

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

Submitted October 19, 2010[**]

Before: O'SCANNLAIN, TALLMAN, and BEA, Circuit Judges

Suburian Partogi, a native and citizen of Indonesia, 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, 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. *Wakkary v. Holder*, 558 F.3d 1049, 1056 (9th Cir. 2009). We deny in part and grant in part the petition for review.

The record does not compel the conclusion that Partogi established changed or extraordinary circumstances excusing the untimely filing of his asylum application. *See* 8 C.F.R. § 1208.4(a); *Ramadan v. Gonzales*, 479 F.3d 646, 656-58 (9th Cir. 2007) (per curiam); *Mutuku v. Holder*, 600 F.3d 1210, 1212 (9th Cir. 2010). Accordingly, Partogi's asylum claim fails.

Substantial evidence supports the agency's denial of CAT relief because Partogi failed to establish it is more likely than not he will be tortured if returned to Indonesia. *See Wakkary*, 558 F.3d at 1067-68.

The agency found Partogi established past persecution on account of his Christian religion, but his presumption of a clear probability of persecution was rebutted because he reasonably could relocate within Indonesia.[1] Intervening case law holds the disfavored group analysis applies to Christians in Indonesia. *Tampubolon v. Holder*, 610 F.3d 1056, 1062 (9th Cir. 2010). Because the agency did not have the benefit of our decision in *Tampubolon*, we remand for the agency

[1] In reaching this conclusion, the agency did not apply the disfavored group analysis.

to apply the disfavored group analysis in its assessment of Partogi's withholding of removal claim. *See Wakkary*, 558 F.3d at 1067; *see also INS v. Ventura*, 537 U.S. 12, 16-18 (2002) (per curiam).

In light of our disposition, we do not reach Partogi's contention that the IJ was biased in his assessment of the evidence.

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

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