

DEC 27 2010

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ZHENHUA LI,

Petitioner,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 07-72560

Agency No. A095-292-022

MEMORANDUM*

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

Submitted December 14, 2010**

Before: GOODWIN, WALLACE, and W. FLETCHER, Circuit Judges.

Zhenhua Li, a native and citizen of China, petitions for review of the Board of Immigration Appeals' ("BIA") order dismissing his appeal from an immigration judge's decision denying his application for asylum and withholding of removal.

We have jurisdiction under 8 U.S.C. § 1252. "We review the BIA's factual

* 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).

findings for substantial evidence.” *Brezilien v. Holder*, 569 F.3d 403, 411 (9th Cir. 2009). We grant the petition for review, and remand.

The BIA concluded that Li established past persecution on account of an imputed religion and was therefore entitled to a presumption of a well-founded fear of future persecution. The BIA’s determination that a fundamental change in circumstances rebutted the presumption is not supported by substantial evidence because the government presented no evidence of such a change, *see Wang v. Ashcroft*, 341 F.3d 1015, 1020 (9th Cir. 2003) (“The INS has presented no evidence to rebut the presumption, and therefore has not met its burden.”), and the BIA’s reasons for its determination were speculative, *see Salazar-Paucar v. INS*, 281 F.3d 1069, 1077 (9th Cir. 2002).

Accordingly, because the government failed to rebut the presumption of a well-founded fear of future persecution, Li is eligible for asylum and entitled to withholding of removal. We remand this case to the BIA for the Attorney General to exercise his discretion under 8 U.S.C. § 1158(b) as to whether to grant Li asylum and for an appropriate order withholding Li’s removal.

PETITION FOR REVIEW GRANTED; REMANDED.