

DEC 27 2010

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

SHAMMI KAPOOR,

Petitioner,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 07-74892

Agency No. A095-429-550

MEMORANDUM*

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

Submitted December 14, 2010**

Before: GOODWIN, WALLACE, and THOMAS, Circuit Judges

Shammi Kapoor, a native and citizen of India, petitions for review of the Board of Immigration Appeals’ (“BIA”) 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 review adverse credibility determinations for substantial evidence. *See Shire v. Ashcroft*, 388 F.3d 1288, 1295 (9th Cir. 2004) (“The IJ’s decision may be reversed only if the evidence presented was so compelling that no reasonable factfinder could find that the petitioner was not credible.”). We have jurisdiction under 8 U.S.C. § 1252 and deny the petition for review.

Kapoor testified that his second arrest on September 23, 2002 prompted his father, out of fear for Kapoor’s safety, to arrange his engagement to an American citizen and send him to the United States. Yet, Kapoor signed a “Non-Immigrant Fiancee Visa Application” on July 29, 2002.

Substantial evidence supports the BIA’s conclusion that, because the discrepancy “calls into question whether the September 2002 persecutory event allegedly leading to his flight from India even occurred . . . [and] whether the respondent even left India out of fear of persecution,” it goes to the heart of Kapoor’s asylum and withholding claims. *See Sing v. Gonzales*, 439 F.3d 1100, 1108 (9th Cir. 2006) (“An inconsistency goes to the heart of a claim if it concerns events central to the petitioner’s version of why he was persecuted and fled.”). The IJ asked Kapoor for an explanation, but he provided none. *See Don v. Gonzales*, 476 F.3d 738, 741 (9th Cir. 2007) (“[T]he IJ must provide a petitioner with a reasonable opportunity to offer an explanation of any perceived inconsistencies

that form the basis of a denial of asylum.”). Because Kapoor has failed to establish eligibility for asylum, he necessarily fails to meet the more stringent standard for withholding of removal. *See Farah v. Ashcroft*, 348 F.3d 1153, 1156 (9th Cir. 2003).

Moreover, nothing in the record supports Kapoor’s due process claim that his testimony was incompetently translated. *See Perez-Lastor v. INS*, 208 F.3d 773, 777 (9th Cir. 2000) (incompetent translation claims reviewed de novo). Kapoor points only to instances where the translator simply could not hear or needed clarification of a statement. Kapoor has also failed to demonstrate that the alleged translation defects prejudiced the outcome of the hearing. *See Aden v. Holder*, 589 F.3d 1040, 1047 (9th Cir. 2009). Thus, due process was not violated.

Finally, because Kapoor’s CAT claim is based on his discredited testimony, and he has proffered no additional evidence to suggest that he will likely be tortured if removed to India, it too must fail. *See Farah*, 348 F.3d at 1157.

PETITION DENIED.