

FILED

UNITED STATES COURT OF APPEALS

JAN 14 2011

FOR THE NINTH CIRCUIT

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

IVAN ARGUIROV GUEORGUOV,

No. 06-73771

Petitioner,

Agency No. A096-219-330

v.

ORDER

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

Before: HUG, RYMER, and N.R. SMITH, Circuit Judges.

Petitioner's motion for reconsideration is DENIED. The memorandum disposition filed on October 19, 2010, is withdrawn. A new disposition will be filed forthwith.

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No. 06-73771

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MEMORANDUM*

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

Submitted October 4, 2010**
San Francisco, California

Before: HUG, RYMER and N.R. SMITH, Circuit Judges.

Ivan Arguirov Gueorguov (“petitioner”), a native and citizen of Bulgaria, petitions for review of a decision of the Board of Immigration Appeals (“BIA”) adopting and affirming an immigration judge’s (“IJ”) denial of his claims for asylum, withholding of removal, and relief under the Convention Against Torture

* 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).

("CAT"). We have jurisdiction under 8 U.S.C. § 1252. The BIA expressly adopted the IJ's decision under *Matter of Burbano* (without constricting the scope of its opinion), thus we review both the IJ's and BIA's decision. *See Abebe v. Gonzales*, 432 F.3d 1037, 1039 (9th Cir. 2005) (en banc). We review an adverse credibility determination for substantial evidence. *Sidhu v. INS*, 220 F.3d 1085, 1088 (9th Cir. 2000). Credibility findings will be upheld unless evidence compels a contrary result. *Don v. Gonzales*, 476 F.3d 738, 741 (9th Cir. 2007). This court reviews for substantial evidence factual findings underlying the denial of relief under CAT. *Silaya v. Mukasey*, 524 F.3d 1066, 1070 (9th Cir. 2008). We deny in part and dismiss in part the petition.

We decline to review petitioner's contention that his prior counsel provided ineffective assistance because he failed to raise that issue before the BIA and thereby failed to exhaust his administrative remedies. *See Puga v. Chertoff*, 488 F.3d 812, 815 (9th Cir. 2007).

Substantial evidence supports the IJ's denial of withholding of removal based on an adverse credibility finding. Because petitioner provided inconsistent statements regarding the basis of his persecution in interviews with immigration officials and in his asylum application, the adverse credibility finding is supported.

See Kohli v. Gonzales, 473 F.3d 1061, 1071 (9th Cir. 2007); *Don v. Gonzales*, 476 F.3d 738, 741-43 (9th Cir. 2007).

Because petitioner's CAT claim is based on the same incredible testimony and he points to no other evidence the IJ should have considered, substantial evidence also supports the denial of CAT relief. *See Farah v. Ashcroft*, 348 F.3d 1153, 1156-57 (9th Cir. 2003). Further, petitioner has not shown it is more likely than not he would be tortured if removed to Bulgaria. *See Wakkary v. Holder*, 558 F.3d 1049, 1067-68 (9th Cir. 2009).

PETITION FOR REVIEW DENIED IN PART AND DISMISSED IN PART.