

JAN 19 2011

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

SHIQUAN YAN,

Petitioner,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 07-74824

Agency No. A097-610-531

MEMORANDUM*

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

Submitted January 10, 2011**

Before: BEEZER, TALLMAN, and CALLAHAN, Circuit Judges.

Shiquan Yan, a native and citizen of China, 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”). We have jurisdiction under

* 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).

8 U.S.C. § 1252. We review for substantial evidence, *Li v. Ashcroft*, 378 F.3d 959, 962 (9th Cir. 2004), and we deny the petition for review.

Substantial evidence supports the agency's adverse credibility finding because Yan testified inconsistently as to whether he was fired from his job as a result of his practice of Falun Gong, and also as to the days and frequency of his practice. *See id.* Yan also failed to provide consistent explanations for these inconsistencies. *See Rivera v. Mukasey*, 508 F.3d 1271, 1275 (9th Cir. 2007). Substantial evidence also supports the IJ's adverse credibility determination based on the IJ's negative assessment of Yan's demeanor. *See Singh-Kaur v. INS*, 183 F.3d 1147, 1151 (9th Cir. 1999). In the absence of credible testimony, Yan's asylum and withholding of removal claims fail. *See Farah v. Ashcroft*, 348 F.3d 1153, 1156 (9th Cir. 2003).

Because Yan's CAT claim is based on evidence the agency found not credible, and he points to no other evidence that shows it is more likely than not he would be tortured if returned to China, his CAT claim also fails. *See id.* at 1156-57.

PETITION FOR REVIEW DENIED.