

MAR 14 2011

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

NELSON ABDON ACIERTO,

Petitioner,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 08-70535

Agency No. A072-512-908

MEMORANDUM*

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

Submitted March 8, 2011**

Before: FARRIS, O’SCANNLAIN, and BYBEE, Circuit Judges.

Nelson Abdon Acierto, a native and citizen of the Philippines, petitions for review of the Board of Immigration Appeals’ order dismissing his appeal from an immigration judge’s decision denying his application for asylum, withholding of removal, and relief under the Convention Against Torture (“CAT”). We have

* 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).

jurisdiction under 8 U.S.C. § 1252. We review for substantial evidence findings of fact, including adverse credibility determinations, *Chebchoub v. INS*, 257 F.3d 1038, 1042 (9th Cir. 2001), and we deny the petition for review.

Substantial evidence supports the agency's adverse credibility determination based on Acierto's inconsistent testimony regarding whether he was in the Zambales province of the Philippines during the time he asserts the New People's Army ("NPA") threatened him. *See id.* at 1043. In the absence of credible testimony, Acierto's asylum and withholding of removal claims fail. *See Farah v. Ashcroft*, 348 F.3d 1153, 1156 (9th Cir. 2003).

Because Acierto's CAT claim is based on the same testimony found to be not credible, and Acierto does not point to any other evidence that shows it is more likely than not he would be tortured if returned to the Philippines, his CAT claim fails. *See id.* at 1156-57.

PETITION FOR REVIEW DENIED.