

APR 12 2011

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

OSBALDO PEREZ DIAZ,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney
General,

Respondent.

No. 08-72048

Agency No. A070-663-705

MEMORANDUM*

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

Submitted April 5, 2011**

Before: B. FLETCHER, CLIFTON, and BEA, Circuit Judges.

Osbaldo Perez Diaz, a native and citizen of Guatemala, petitions for review of the Board of Immigration Appeals' order dismissing his appeal from an immigration judge's decision denying his application for asylum and withholding of deportation. We have jurisdiction under 8 U.S.C. § 1252. We review for

* 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).

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 the major inconsistencies within and between Perez Diaz's asylum application and his testimony concerning what year guerrillas killed his father and what year Perez Diaz left Guatemala. *See id.* at 1042-43; *Don v. Gonzales*, 476 F.3d 738, 741-42 (9th Cir. 2007) (a date discrepancy "went to the heart of [petitioner's] claim because it involved the very event upon which he predicated his claim for asylum"). Nor do his explanations compel a contrary conclusion. *Don*, 476 F.3d at 741. In the absence of credible testimony, Perez Diaz's asylum and withholding of deportation claims fail. *See Farah v. Ashcroft*, 348 F.3d 1153, 1156 (9th Cir. 2003).

PETITION FOR REVIEW DENIED.