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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>LYAZID ABAKKA; AMINA MELLITY,</p> <p style="text-align: center;">Petitioners,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p style="text-align: center;">Respondent.</p>

No. 07-73660

Agency Nos. A079-629-700
A096-165-806

MEMORANDUM*

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

Submitted June 15, 2011**

Before: CANBY, O’SCANNLAIN, and FISHER, Circuit Judges.

Lyazid Abakka and Amina Mellity, natives and citizens of Morocco, petition for review of the Board of Immigration Appeals’ (“BIA”) order dismissing their appeal from an immigration judge’s decision denying their applications for asylum and withholding of removal. We have jurisdiction under 8 U.S.C. § 1252. We

* 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).

review for substantial evidence factual findings, *Ornelas-Chavez v. Gonzales*, 458 F.3d 1052, 1055-56 (9th Cir. 2006), and we deny the petition for review.

The record does not compel the conclusion that Mellity established extraordinary circumstances excusing the untimely filing of her asylum application. *See* 8 C.F.R. § 1208.4(a); *Toj-Culpatan v. Holder*, 612 F.3d 1088, 1090-92 (9th Cir. 2010). Accordingly, Mellity's asylum claim fails.

Substantial evidence supports the agency's finding that petitioners failed to demonstrate past persecution or a clear probability of future persecution, because they did not establish that the government was unable or unwilling to protect them from the members of the Polisario Front. *See Castro-Perez v. Gonzales*, 409 F.3d 1069, 1072 (9th Cir. 2005) (the burden is on the applicant to show that the government is unable or unwilling to control a non-governmental persecutor). We reject petitioners' claim that the BIA applied an incorrect legal standard. Accordingly, petitioners' withholding of removal claims fail.

PETITION FOR REVIEW DENIED.