

AUG 15 2011

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>WILLIAM GITAU MUNGE,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p>Respondent.</p>

No. 10-70858

Agency No. A096-167-113

MEMORANDUM*

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

Submitted August 11, 2011**

Before: THOMAS, SILVERMAN, and CLIFTON, Circuit Judges.

William Gitau Munge, a native and citizen of Kenya, petitions for review of the Board of Immigration Appeals’ (“BIA”) decision affirming an immigration judge’s order 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 factual findings. *Zehatye v. Gonzales*, 453 F.3d 1182, 1184-85 (9th Cir. 2006). We deny the petition for review.

Substantial evidence supports the BIA's adverse credibility determination based on the inconsistencies between Munge's testimony and declaration regarding the dates and the number of times the Mungiki kidnaped him. *See Chebchoub v. INS*, 257 F.3d 1038, 1043 (9th Cir. 2001) (inconsistencies which go to the heart of petitioner's asylum claim support an adverse credibility finding); *Li v. Ashcroft*, 378 F.3d 959, 964 (9th Cir. 2004) (a negative credibility finding will be upheld "so long as one of the identified grounds is supported by substantial evidence and goes to the heart of [the] claim of persecution") (internal citation and quotation omitted). Accordingly, in the absence of credible testimony, Munge's asylum and withholding of removal claims fail. *See Farah v. Ashcroft*, 348 F.3d 1153, 1156 (9th Cir. 2003).

Finally, because Munge's CAT claim is based on the same testimony that the BIA found not credible, and he points to no additional evidence that the BIA should have considered regarding the likelihood of torture if he is returned to Kenya, his CAT claim also fails. *See id.* at 1156-57.

PETITION FOR REVIEW DENIED.

10-70858