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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>AMARPREET SINGH VIRK,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p>Respondent.</p>
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No. 08-72670

Agency No. A095-599-564

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.

Amarpreet Singh Virk, a native and citizen of India, 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. *Lopez v. Ashcroft*, 366 F.3d 799, 805 (9th Cir. 2004). We grant the petition for review and we remand.

In determining the government rebutted Virk's presumption of a well-founded fear of future persecution, the agency erred because it relied on a United States State Department report that pre-dated Virk's past persecution and because it incorporated findings of fact this court rejected in *Virk v. Gonzales*, No. 04-74691, 168 Fed. App'x 237 (9th Cir. 2006). Further, in determining the report prepared by ENSAAF was entitled to little weight because ENSAAF had not been shown to be objective, accurate, or reliable, the agency failed to acknowledge that ENSAAF is cited to and relied upon in the 2006 U. S. State Department Report.

Accordingly, we grant the petition and remand to the agency on an open record for further proceedings consistent with this disposition. *See INS v. Ventura*, 537 U.S. 12, 16-18 (2002) (per curiam).

PETITION FOR REVIEW GRANTED; REMANDED.