

SEP 09 2011

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

TOSHIAKI ITO,

Petitioner,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 07-71496

Agency No. A095-297-304

MEMORANDUM*

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

Submitted August 29, 2011**
Pasadena, California

Before: SCHROEDER and GOULD, Circuit Judges, and SEEBORG, District
Judge.***

Toshiaki Ito, a native and citizen of Japan, petitions for review of a decision
of the Board of Immigration Appeals summarily affirming an Immigration Judge's

* 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).

*** The Honorable Richard Seeborg, United States District Judge for the
Northern District of California, sitting by designation.

(“IJ”) denial of his application for asylum, withholding of removal and protection under the Convention Against Torture. Ito claims that he fears future persecution on account of his sexual orientation.

Petitioner has not established that he suffered any past persecution on that account, nor has he established any circumstances indicating that he would suffer future persecution if he returned. The record shows that the petitioner traveled back and forth between the United States and Japan several times in the years preceding his filing of his application, and the testimony of his own expert fails to establish persecution on account of homosexuality in Japan. Ito has not presented any evidence of severe harm that would rise to a level of persecution. *See Hoxha v. Ashcroft*, 319 F.3d 1179 (9th Cir. 2003). For similar reasons, Ito did not show a likelihood that he would be tortured if returned to Japan.

Finally, Ito’s assertion that the IJ did not properly consider and weigh all the evidence and testimony does not raise a colorable due process claim. *Martinez-Rosas v. Gonzales*, 424 F.3d 926, 930 (9th Cir. 2005).

The petition for review is **DENIED**.