

SEP 27 2011

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

PETER LEONIDOVICH TSIMBALYUK,

Petitioner,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 10-71485

Agency No. A071-171-792

MEMORANDUM*

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

Argued and Submitted June 10, 2011
Seattle, Washington

Before: REINHARDT, W. FLETCHER, and RAWLINSON, Circuit Judges.

Peter Leonidovich Tsimbalyuk (Tsimbalyuk) petitions for review of the Board of Immigration Appeals' dismissal of his appeal of an Immigration Judge's decision denying his applications for cancellation of removal, asylum, withholding of removal, and relief pursuant to the Convention Against Torture (CAT).

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

1. The Board of Immigration Appeals (BIA) correctly determined that violation of Revised Code of Washington section 9A.56.140(1) is categorically an aggravated felony theft offense as defined by 8 U.S.C. § 1101(a)(43)(G). *See Verdugo-Gonzalez v. Holder*, 581 F.3d 1059, 1060-61 (9th Cir. 2009).

Tsimbalyuk's conviction under that statute renders him statutorily ineligible for asylum and cancellation of removal. *See Rendon v. Mukasey*, 520 F.3d 967, 973 (9th Cir. 2008), *as amended* (explaining that these forms of relief are unavailable to a petitioner who has been convicted of an aggravated felony); *see also* 8 U.S.C. §§ 1229b(a)(3), 1158(b)(2)(A)(ii), (B)(i).

2. The BIA's determination that Tsimbalyuk failed to establish eligibility for withholding of removal under 8 U.S.C. § 1231(b)(3) was supported by substantial evidence. *See Viridiana v. Holder*, 630 F.3d 942, 951 (9th Cir. 2011); *see also* 8 C.F.R. § 1208.16(b)(1)-(2).

3. The BIA's determination that Tsimbalyuk failed to establish eligibility for relief pursuant to the CAT was supported by substantial evidence. *See Shrestha*

v. Holder, 590 F.3d 1034, 1048 (9th Cir. 2010); *see also* 8 C.F.R. § 1208.16(c)
(requiring a showing of torture).

PETITION DENIED.