

JAN 23 2012

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

| |
|--|
| <p>RICHARD HUTASOIT,</p> <p style="text-align: center;">Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p style="text-align: center;">Respondent.</p> |
|--|

No. 08-73209

Agency No. A097-194-590

MEMORANDUM*

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

Submitted January 17, 2012**

Before: LEAVY, TALLMAN, and CALLAHAN, Circuit Judges.

Richard Hutasoit, a native and citizen of Indonesia, petitions pro se 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 factual findings. *Zehatye v. Gonzales*, 453 F.3d 1182, 1184-85 (9th Cir. 2006). We deny in part and grant in part the petition for review, and we remand.

The record does not compel the conclusion that Hutasoit established changed circumstances to excuse his untimely asylum application. *See* 8 C.F.R. § 1208.4(a)(4); *Ramadan v. Gonzales*, 479 F.3d 646, 657-58 (9th Cir. 2007). Accordingly, his asylum claim fails.

Substantial evidence supports the agency's finding that Hutasoit's experiences in Indonesia, even considered cumulatively, did not rise to the level of past persecution. *See Hoxha v. Ashcroft*, 319 F.3d 1179, 1182 (9th Cir. 2003). In addition, the record does not compel the conclusion that there is a pattern or practice of persecution of Christians in Indonesia. *See Wakkary v. Holder*, 558 F.3d 1049, 1061 (9th Cir. 2009).

In assessing Hutasoit's individualized risk of future persecution, however, the agency did not have the benefit of our opinions in *Wakkary* or *Tampubolon v. Holder*, 610 F.3d 1056 (9th Cir. 2010). Accordingly, we grant the petition with respect to Hutasoit's withholding of removal claim and remand for the agency to consider it under a disfavored group analysis. *See INS v. Ventura*, 537 U.S. 12, 16 (2002) (per curiam).

Substantial evidence supports the agency's denial of CAT relief because Hutasoit failed to demonstrate it is more likely than not he will be tortured if returned to Indonesia. *See Wakkary*, 558 F.3d at 1067-68.

Each party shall bear their own costs on this petition for review.

**PETITION FOR REVIEW DENIED in part; GRANTED in part;
REMANDED.**