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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>JORGE ANIBAL CIFUENTES-HERNANDEZ,</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>
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No. 09-70332

Agency No. A097-907-752

MEMORANDUM*

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

Submitted February 21, 2012**

Before: FERNANDEZ, McKEOWN, and BYBEE, Circuit Judges.

Jorge Anibal Cifuentes-Hernandez, a native and citizen of Guatemala, 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

* 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).

asylum, withholding of removal, and protection under the Convention Against Torture (“CAT”). We have jurisdiction under 8 U.S.C. § 1252. We review de novo questions of law and for substantial evidence factual findings, *Husyev v. Mukasey*, 528 F.3d 1172, 1177 (9th Cir. 2008), applying the new standards governing adverse credibility determinations created by the REAL ID Act, *Shrestha v. Holder*, 590 F.3d 1034, 1039 (9th Cir. 2010). We deny the petition for review.

The record does not compel the conclusion that Cifuentes-Hernandez established changed or extraordinary circumstances excusing his untimely asylum application. *See* 8 C.F.R. § 1208.4(a)(4), (5). Accordingly, we deny the petition as to his asylum claim.

Substantial evidence supports the agency’s adverse credibility finding based both on the omission from Cifuentes-Hernandez’s asylum application of his brother’s death and on inconsistencies between his application, his sworn statement, and his testimony regarding the basis for his claim. *See Shrestha*, 590 F.3d at 1048 (adverse credibility finding reasonable under totality of circumstances). Further, the agency was not compelled to accept his explanations. *See Zamanov v. Holder*, 649 F.3d 969, 974 (9th Cir. 2011). Accordingly, in the

absence of credible testimony, his withholding of removal claim fails. *See Farah v. Ashcroft*, 348 F.3d 1153, 1156 (9th Cir. 2003).

In addition, Cifuentes-Hernandez's CAT claim fails because it is based on the same statements the agency found not credible, and the record does not otherwise compel a finding it is more likely than not he would be tortured if returned to Guatemala. *See id.* at 1156-57.

Finally, Cifuentes-Hernandez's due process claims are belied by the record.

PETITION FOR REVIEW DENIED.