

APR 24 2012

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>DARSHAN KAUR; et al.,</p> <p>Petitioners,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p>Respondent.</p>

No. 09-71114

Agency Nos. A099-330-188
A099-330-189

MEMORANDUM*

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

Submitted April 17, 2012**

Before: LEAVY, PAEZ, and BEA, Circuit Judges.

Darshan Kaur and her son, natives and citizens of India, petition for review of the Board of Immigration Appeals’ (“BIA”) order dismissing their appeal from an immigration judge’s decision denying their application for asylum, withholding of removal, and protection under the Convention Against Torture (“CAT”). We

* 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).

have jurisdiction under 8 U.S.C. § 1252. We review for substantial evidence the agency's factual findings, applying the standards governing adverse credibility determinations created by the REAL ID Act, *Shrestha v. Holder*, 590 F.3d 1034, 1039 (9th Cir. 2010), and we deny the petition for review.

Substantial evidence supports the agency's adverse credibility determination because Kaur gave inconsistent testimony regarding her husband's whereabouts on the date of her first alleged arrest, *see id.* at 1040–44 (adverse credibility determination was reasonable under the REAL ID Act's "totality of the circumstances"), and Kaur's explanation does not compel a different conclusion, *see Rivera v. Mukasey*, 508 F.3d 1271, 1275 (9th Cir. 2007) (upholding agency finding that explanations were insufficient). In the absence of credible testimony, petitioners' asylum and withholding of removal claims fail. *See Farah v. Ashcroft*, 348 F.3d 1153, 1156 (9th Cir. 2003).

Because Kaur's CAT claim is based on the same testimony found to be not credible, and she does not point to any evidence that shows it is more likely than not that she would be tortured if returned to India, her CAT claim also fails. *See id.* at 1156-57. We reject Kaur's contention the BIA failed to properly analyze her CAT claim. *See* 8 C.F.R. § 1208.18(a)(1).

PETITION FOR REVIEW DENIED.