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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>MOTAN SILABAN,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p>Respondent.</p>

No. 08-74116

Agency No. A095-630-166

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.

Motan Silaban, a native and citizen of Indonesia, petitions for review of the Board of Immigration Appeals’ order dismissing his appeal from an immigration judge’s decision denying his application for withholding of removal. We have jurisdiction under 8 U.S.C. § 1252. We review for substantial evidence, *Gonzalez-*

* 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).

Hernandez v. Ashcroft, 336 F.3d 995, 998 (9th Cir. 2003), and we grant the petition for review, and we remand.

The agency found that, even if Silaban suffered persecution in the past, there has been a fundamental change in circumstances in Indonesia such that he no longer has a clear probability of persecution. Substantial evidence does not support the agency's finding. *See Mutuku v. Holder*, 600 F.3d 1210, 1213 (9th Cir. 2010) (agency "must provide an individualized analysis of how changed conditions will affect the specific petitioner's situation" and country reports did not support changed circumstances finding). In addition, in assessing Silaban's fear of future persecution, the agency did not have the benefit of our decisions in *Wakkary v. Holder*, 558 F.3d 1049, 1064–65 (9th Cir. 2009) and *Tampubolon v. Holder*, 610 F.3d 1056, 1062 (9th Cir. 2010). Accordingly, we grant the petition and remand for the BIA to assess Silaban's withholding of removal claim under the disfavored group analysis in the first instance. *See Wakkary*, 558 F.3d at 1067; *see also INS v. Ventura*, 537 U.S. 12, 16–18 (2002) (per curiam).

PETITION FOR REVIEW GRANTED; REMANDED.