

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JUL 23 2012

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

VICTALINO REYES GONZALEZ
ZACARIAS,

Petitioner,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 10-70407

Agency No. A070-934-772

MEMORANDUM*

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

Submitted July 17, 2012**

Before: SCHROEDER, THOMAS, and SILVERMAN, Circuit Judges.

Victalino Reyes Gonzalez Zacarias, a native and citizen of Guatemala, petitions 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").

* 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).

Our jurisdiction is governed by 8 U.S.C. § 1252. We review for substantial evidence the agency's factual findings, 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 in part and dismiss in part the petition for review.

Substantial evidence supports the agency's adverse credibility determination based on Gonzalez Zacarias's conflicting testimony regarding whether he witnessed his father's murder and the omission of the murder from his prior asylum application. *See id.* at 1047 (inability to consistently describe the underlying events that give rise to petitioner's fear of persecution can support an adverse credibility finding); *Zamanov v. Holder*, 649 F.3d 969, 973 (9th Cir. 2011) ("Material alterations in the applicant's account of persecution are sufficient to support an adverse credibility finding."). In the absence of credible testimony, Gonzalez Zacarias's asylum and withholding of removal claims fail. *See Farah v. Ashcroft*, 348 F.3d 1153, 1156 (9th Cir. 2003); *Shrestha*, 590 F.3d at 1048.

Because Gonzalez Zacarias's CAT claim is based on the same testimony the agency found not credible, and he points to no other evidence showing it is more likely than not he will be tortured if returned to Guatemala, his CAT claim also fails. *See Farah*, 348 F.3d at 1156-57; *Shrestha*, 590 F.3d at 1048-49.

We lack jurisdiction to review Gonzalez Zacarias's claim that the agency abused its discretion in denying voluntary departure. *See* 8 U.S.C. § 1229c(f); *Esquivel-Garcia v. Holder*, 593 F.3d 1025, 1030 (9th Cir. 2010).

Gonzalez Zacarias's motion to amend proof of service is granted.

PETITION FOR REVIEW DENIED in part; DISMISSED in part.