

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

NOV 29 2012

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

ROGELIO MARQUEZ-CRUZ,

Petitioner,

v.

ERIC H. HOLDER, JR., Attorney General,

Respondent.

No. 11-73199

Agency No. A089-854-359

MEMORANDUM*

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

Argued and Submitted November 5, 2012
Seattle, Washington

Before: W. FLETCHER and FISHER, Circuit Judges, and DEARIE, District
Judge.**

Rogelio Marquez-Cruz petitions for review of the BIA's denial of his
application for asylum, withholding of removal and relief under the Convention
Against Torture. We deny the petition.

* This disposition is not appropriate for publication and is not precedent
except as provided by 9th Cir. R. 36-3.

** The Honorable Raymond J. Dearie, Senior United States District Judge
for the Eastern District of New York, sitting by designation.

1. The BIA's determination that Marquez did not file an asylum application within a reasonable time given his changed circumstances is supported by substantial evidence. Although the events giving rise to the changed circumstances occurred in September and October 2008, Marquez failed to take any action to file an asylum application until August 2009, after he was arrested for domestic assault and removal proceedings were instituted against him. The evidence does not compel the conclusion that his delay was reasonable. *See INS v. Elias-Zacarias*, 502 U.S. 478, 481 n.1 (1992) ("To reverse the BIA finding we must find that the evidence not only *supports* [a contrary] conclusion, but *compels* it . . .").

2. Substantial evidence also supports the BIA's determination that Marquez has not shown a clear probability that he will be persecuted or tortured if he is removed to Mexico. Given his family's continued safety in Mexico following the 2008 incidents, the absence of any evidence that Marquez himself was targeted and the BIA's observation that there is no reason for the perpetrators of the 2008 crimes to believe that Marquez has any information on or affiliation with Rogaciano Alva Alvarez, the record does not compel a conclusion contrary to that reached by the BIA.

PETITION DENIED.