

DEC 21 2012

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ALBERT YENOKOVICH PAPAZYAN;
VARTUSH PAPAZYAN,

Petitioners,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 08-70393

Agency Nos. A097-361-135
 A097-361-136

MEMORANDUM*

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

Argued and Submitted October 11, 2012
Pasadena, California

Before: PREGERSON and W. FLETCHER, Circuit Judges, and PIERSOL, Senior
District Judge.**

1 Albert Yenokovich Papazyan petitions for review of a decision of the Board
2 of Immigration Appeals (BIA) affirming an Immigration Judge’s (IJ) denial of his

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

** The Honorable Lawrence L. Piersol, Senior District Judge for the U.S.
District Court for South Dakota, sitting by designation.

1 application for asylum, withholding of removal, and relief under the United
2 Nations Convention Against Torture (CAT). Papazyan’s wife, Vartush Papazyan,
3 is a derivative applicant. This court has jurisdiction pursuant to 8 U.S.C. § 1252.
4 We deny the petition.

5 Where, as here, “the BIA reviews the IJ’s decision for an abuse of
6 discretion,” we review the IJ’s decision. *de Leon-Barrios v. I.N.S.*, 116 F.3d 391,
7 393 (9th Cir. 1997). We review the IJ’s credibility findings under a substantial
8 evidence standard. *Aguilera-Cota v. I.N.S.*, 914 F.2d 1375, 1381 (9th Cir. 1990).

9 The IJ’s adverse credibility finding was supported by substantial evidence
10 because it was based on material inconsistencies that went to the heart of
11 Papazyan’s asylum claim. *See Berroteran-Melendez v. I.N.S.*, 955 F.2d 1251, 1256
12 (9th Cir. 1992) (holding substantial evidence supported the IJ’s and BIA’s adverse
13 credibility finding where there were material inconsistencies between petitioner’s
14 asylum application and his testimony). Thus, the IJ had sufficient basis to
15 conclude that Papazyan failed to present credible testimony to establish his asylum
16 claim. *Id.* at 1257-58. It follows that the IJ also had sufficient basis to conclude
17 Papazyan failed to meet the stricter burden of proof required for withholding of
18 removal. *Mejia-Paiz v. I.N.S.*, 111 F.3d 720, 725 (9th Cir. 1997).

1 Finally, substantial evidence supports the IJ's denial of CAT relief because
2 Papazyan failed to establish it is more likely than not that he would be tortured if
3 he returned to Russia. *Kamalthas v. INS*, 251 F.3d 1279, 1282 (9th Cir. 2001).

4 DENIED.