

JAN 16 2013

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>HILARIO GUZMAN TRUJILLO,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p>Respondent.</p>
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No. 06-71423

Agency No. A029-146-316

MEMORANDUM\*

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

Submitted January 15, 2013\*\*

Before: SILVERMAN, BEA, and NGUYEN, Circuit Judges.

Hilario Guzman Trujillo, a native and citizen of Guatemala, petitions for review of the Board of Immigration Appeals’ order summarily affirming an immigration judge’s (“IJ”) removal order. We have jurisdiction under 8 U.S.C. § 1252. We review de novo questions of law, and review for substantial evidence

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\* 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).

the agency's factual findings. *Wakkary v. Holder*, 558 F.3d 1049, 1056 (9th Cir. 2009). We review for abuse of discretion the agency's determination that an alien was convicted of a particularly serious crime. *Arbid v. Holder*, 700 F.3d 379, 383 (9th Cir. 2012). We deny the petition for review.

The IJ correctly determined that Guzman Trujillo's conviction under California Penal Code § 288(a) is an aggravated felony that renders him ineligible for asylum. *See* 8 C.F.R. § 1208.13(c)(2)(D) (alien who files asylum application prior to April 1, 1997, is ineligible if convicted of an aggravated felony); *United States v. Baron-Medina*, 187 F.3d 1144, 1147 (9th Cir. 1999) (section 288(a) is categorically an aggravated felony under 8 U.S.C. § 1101(a)(43)(A)).

The IJ did not abuse her discretion when she determined that Guzman Trujillo's conviction is a particularly serious crime that renders him ineligible for withholding of removal. *See* 8 U.S.C. § 1231(b)(3)(B)(ii). The record reflects that Guzman Trujillo was sentenced to state prison for engaging in significant sexual contact with a child of eight over a period of months. *See Arbid*, 700 F.3d 379 at 384 (particularly serious crime determinations are informed by a series of factors, including the nature and underlying facts of the conviction, and the type of sentence imposed).

Substantial evidence supports the IJ's determination that Guzman Trujillo did not establish it is more likely than not that he would be tortured if he returned to Guatemala. *See Wakkary*, 558 F.3d at 1067-68.

**PETITION FOR REVIEW DENIED.**