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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>NAIQIANG HE,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p>Respondent.</p>

No. 11-70365

Agency No. A088-785-255

MEMORANDUM*

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

Submitted March 12, 2013**

Before: PREGERSON, REINHARDT, and W. FLETCHER, Circuit Judges.

Naiqiang He, a native and citizen of China, petitions for review of the Board of Immigration Appeals’ (“BIA”) order dismissing his appeal from an immigration judge’s decision denying his application for asylum, withholding of removal, and protection under the Convention Against Torture (“CAT”). We have jurisdiction

* 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).

under 8 U.S.C. § 1252. We review for substantial evidence the agency’s factual findings, applying the standards governing adverse credibility determinations created by the REAL ID Act, *Shrestha v. Holder*, 590 F.3d 1034, 1039-40 (9th Cir. 2010), and we deny the petition for review.

Substantial evidence supports the BIA’s adverse credibility determination because He claimed that his father’s death in 2005 motivated him to start a family in violation of China’s family planning laws, but He’s testimony and declaration were inconsistent with his household registration and asylum application regarding whether his father had passed away. *See id.* at 1046-47 (“Although inconsistencies no longer need to go to the heart of the petitioner’s claim, when an inconsistency is at the heart of the claim it doubtless is of great weight.”). Further, the agency was not compelled to accept He’s explanations for these discrepancies. *See Zamanov v. Holder*, 649 F.3d 969, 974 (9th Cir. 2011). In the absence of credible testimony, He’s asylum and withholding of removal claims fail. *See Farah v. Ashcroft*, 348 F.3d 1153, 1156 (9th Cir. 2003).

Finally, substantial evidence supports the agency’s denial of He’s CAT claim because he failed to show it is more likely than not that he will be tortured if returned to China. *See Zheng v. Holder*, 644 F.3d 829, 835-36 (9th Cir. 2011).

PETITION FOR REVIEW DENIED.