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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

HERRY DASTANTA TARIGAN;
DEBORA SIMAMORA; SAMUEL
ALTASYET SIMAMORA,

Petitioners,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 08-71617

Agency Nos. A095-630-043
A095-355-820
A095-629-788

MEMORANDUM*

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

Submitted December 10, 2012**

Before: HUG, FARRIS, and LEAVY, Circuit Judges.

Herry Dastanta Tarigan (“Herry”), Deborah Simamora (“Deborah”), and
Samuel Altasyet Simamora (“Samuel”), natives and citizens of Indonesia, petition

* 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). Accordingly, petitioners’
request for oral argument is denied.

for review the Board of Immigration Appeals' ("BIA") order dismissing their appeal from an immigration judge's ("IJ") decision denying their applications for asylum, withholding of removal, and relief under the Convention Against Torture ("CAT"). Our jurisdiction is governed by 8 U.S.C. § 1252. We review for substantial evidence factual findings and review de novo legal determinations. *Wakkary v. Holder*, 558 F.3d 1049, 1056 (9th Cir. 2009). We deny in part, dismiss in part, and grant in part the petition for review, and we remand.

Herry and Samuel do not challenge the agency's dispositive determination that their asylum applications are time-barred. *See Martinez-Serrano v. INS*, 94 F.3d 1256, 1259-60 (9th Cir. 1996) (issues not specifically raised and argued in a party's opening brief are waived). Accordingly, review of their asylum claims is denied. We dismiss Herry's claim for humanitarian asylum because he failed to exhaust this claim before the BIA. *See Barron v. Ashcroft*, 358 F.3d 674, 678 (9th Cir. 2004).

In assessing petitioners' claims, the agency did not have the benefit of our opinions in *Wakkary* or *Tampubolon v. Holder*, 610 F.3d 1056 (9th Cir. 2010). Accordingly, we grant the petition with respect to Deborah's asylum and withholding of removal claims and Herry and Samuel's withholding of removal claims. We remand for the agency to analyze these claims under a disfavored

group analysis in the first instance. *See INS v. Ventura*, 537 U.S. 12, 16-18 (2002) (per curiam); *see also Wakkary*, 558 F.3d at 1062-65 (disfavored group analysis applies to withholding of removal).

Substantial evidence supports the agency's denial of CAT relief because petitioners failed to demonstrate it is more likely than not they will be tortured if returned to Indonesia. *See Wakkary*, 558 F.3d at 1067-68.

Each party shall bear their own costs on appeal.

**PETITION FOR REVIEW DENIED in part; DISMISSED in part;
GRANTED in part; REMANDED.**