

JUL 31 2013

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

YEVGENIY VALENTINOVIC
LESHCHINKIY, a.k.a. Vadim V.
Leshchinskiy, a.k.a. Yevgeniy V.
Leshchinskiy, a.k.a. Eugene V. Leshinsky,

Petitioner,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 09-71903

Agency No. A071-280-443

MEMORANDUM*

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

Submitted July 24, 2013**

Before: ALARCÓN, CLIFTON, and CALLAHAN, Circuit Judges.

Yevgeniy Valentinovic Leshchinkiy, a native and citizen of Ukraine,
petitions for review of the Board of Immigration Appeals' order dismissing his
appeal from an immigration judge's removal order. Our jurisdiction is governed

* 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).

by 8 U.S.C. § 1252. We review for substantial evidence the agency's factual findings. *Wakkary v. Holder*, 558 F.3d 1049, 1056 (9th Cir. 2009). We dismiss in part and deny in part the petition for review.

Leshchinkiy does not challenge that his 2007 conviction for burglary in the second degree in violation of R.C.W. § 9A.52.030 is an aggravated felony burglary offense that renders him removable under 8 U.S.C. § 1227(a)(2)(A)(iii). The aggravated felony conviction also renders Leshchinkiy statutorily ineligible for asylum. 8 U.S.C. § 1158(b)(2)(A)(ii), (B)(i).

Because Leshchinkiy was convicted of an aggravated felony and has not raised a colorable legal challenge, we lack jurisdiction to review the agency's discretionary determination that his conviction is a particularly serious crime that bars him from receiving withholding of removal. *See* 8 U.S.C. § 1252(a)(2)(C) (limiting review when petitioner has been convicted of an aggravated felony); *see also Pechenkov v. Holder*, 705 F.3d 444, 447-49 (9th Cir. 2012).

Substantial evidence supports the agency's denial of protection under the Convention Against Torture because Leshchinkiy failed to establish that it is more likely than not he will be tortured if returned to Ukraine. *See Wakkary*, 558 F.3d at 1067-68; *see also Zehatye v. Gonzales*, 453 F.3d 1182, 1184-85 (9th Cir. 2006).

PETITION FOR REVIEW DISMISSED in part; DENIED in part.