

JUL 31 2013

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FERDINANDUS NAHAK,

Petitioner,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 10-70358

Agency No. A096-361-798

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.

Ferdinandus Nahak, a native and citizen of Indonesia, petitions for review of the Board of Immigration Appeals’ (“BIA”) order dismissing his appeal from an immigration judge’s decision denying his application for withholding of removal and protection under the Convention Against Torture (“CAT”). We have jurisdiction under 8 U.S.C. § 1252. We review for substantial evidence the

* 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).

agency's factual findings. *Wakkary v. Holder*, 558 F.3d 1049, 1056 (9th Cir. 2009).

We deny in part and grant in part the petition for review, and we remand.

Substantial evidence supports the BIA's denial of CAT relief because Nahak failed to demonstrate it is more likely than not he will be tortured if returned to Indonesia. *See Wakkary*, 558 F.3d at 1068. Accordingly, Nahak's CAT claim fails.

With respect to withholding of removal, the BIA concluded that, assuming Nahak testified credibly and established past persecution, circumstances have fundamentally changed so as to rebut the presumption of future persecution. But the BIA did not address the particular risk Nahak faces as a member of the Maluku Sovereignty Front. *See Ali v. Holder*, 637 F.3d 1025, 1030 (9th Cir. 2011) (agency must make an "individualized determination" of how changed country circumstances might affect a person in petitioner's specific situation). Accordingly, we grant the petition with respect to withholding of removal, and we remand for the agency to make the required individualized determination. In light of our conclusions, we do not reach Fransiscus's disfavored group argument.

Each party shall bear its own costs for this petition for review.

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