

JUL 31 2013

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>HASUDUNGAN NAPITUPULU,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p>Respondent.</p>

No. 11-71908

Agency No. A096-496-849

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.

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

* 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).

evidence the agency’s factual findings. *Wakkary v. Holder*, 558 F.3d 1049, 1056 (9th Cir. 2009). We grant the petition for review and we remand.

The BIA stated the incidents of harm Napitupulu suffered “involved no physical harm.” This is not supported by the record. Napitupulu testified that in one incident he was attacked and beaten by his co-workers, he fell to the ground, and it took him ten days to recover. Because it is not clear the BIA considered this incident in evaluating Napitupulu’s withholding of removal claim under a disfavored group analysis, we remand to the agency to do so in the first instance. *See INS v. Ventura*, 537 U.S. 12, 16-18 (2002) (per curiam).

We do not address Napitupulu’s contention that he suffered past persecution because the court previously rejected it. *See Napitupulu v. Holder*, No. 07-74120, 2010 WL 2990836 (9th Cir. July 29, 2010).

PETITION FOR REVIEW GRANTED; REMANDED.