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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>JOSE PASCUAL VICENTE-SIMON,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p>Respondent.</p>
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No. 11-73888

Agency No. A099-579-243

MEMORANDUM*

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

Submitted June 25, 2014**

Before: HAWKINS, TALLMAN, and NGUYEN, Circuit Judges.

Jose Pascual Vicente-Simon, a native and citizen of El Salvador, petitions for review of the Board of Immigration Appeals’ (“BIA”) order dismissing his appeal of the immigration judge’s (“IJ”) decision denying his application for asylum and withholding of removal. Our jurisdiction is governed by

* 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).

8 U.S.C. § 1252. We review for substantial evidence adverse credibility determinations. *Shrestha v. Holder*, 590 F.3d 1034, 1039 (9th Cir. 2010). We dismiss in part and deny in part the petition for review.

We lack jurisdiction to consider Vicente-Simon's ineffective assistance of counsel claim because Vicente-Simon failed to exhaust the claim in his direct appeal to the BIA. *See Barron v. Ashcroft*, 358 F.3d 674, 677-78 (9th Cir. 2004) (court lacks jurisdiction to review claims not raised to the agency); *see also Puga v. Chertoff*, 488 F.3d 812, 815-16 (9th Cir. 2007) (indicating that ineffective assistance of counsel claims must be raised in a motion to reopen before the BIA).

Vicente-Simon's motion to take judicial notice is denied. *See Fisher v. INS*, 79 F.3d 955, 963-64 (9th Cir. 1996) (en banc) (court's review is limited to the administrative record).

Substantial evidence supports the agency's adverse credibility determination based on inconsistencies between Vicente-Simon's testimony and his supporting documents regarding the injuries he sustained, the reason he was targeted, and whether he saw his father after the second kidnaping. *See Shrestha*, 590 F.3d at 1048 (adverse credibility finding was reasonable under the totality of the circumstances); *see also Goel v. Gonzales*, 490 F.3d 735, 739 (9th Cir. 2007). Vicente-Simon's explanations do not compel a contrary conclusion. *See Lata v.*

INS, 204 F.3d 1241, 1245 (9th Cir. 2000). In the absence of credible testimony, Vicente-Simon's asylum and withholding of removal claims fail. *Farah v. Ashcroft*, 348 F.3d 1153, 1156 (9th Cir. 2003).

PETITION FOR REVIEW DISMISSED in part; DENIED in part.