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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

OSCAR HUMBERTO HIGUEROS,

Petitioner,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 11-71380

Agency No. A087-913-490

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.

Oscar Humberto Higueros, a native and citizen of Guatemala, petitions for review of the Board of Immigration Appeals’ (“BIA”) order dismissing his appeal from an immigration judge’s decision denying his application for relief under the Convention Against Torture (“CAT”). We have jurisdiction under 8 U.S.C.

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\* 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).

§ 1252. We review for substantial evidence the agency’s factual findings, *Tapia Madrigal v. Holder*, 716 F.3d 499, 503 (9th Cir. 2013), and we grant the petition for review and remand.

In assessing Higueros’s fear of torture, the BIA acknowledged the evidence showed the existence of “rogue officials” in Guatemala, and found the existence of rogue officials “cannot be used” to demonstrate that government officials would acquiesce to any torture of Higueros. The BIA’s finding is not supported, *see Tapia Madrigal*, 716 F.3d at 509-10 (“[A]n application for CAT relief need not show that the entire foreign government would consent to or acquiesce in his torture. He need show only that ‘a public official’ would so acquiesce.”), and its analysis is otherwise not clear, *see Recinos De Leon v. Gonzales*, 400 F.3d 1185, 1189 (9th Cir. 2005) (“When the agency’s reasoning is indiscernible, the courts cannot exercise their duty of review, and instead must remand to the agency.”) (internal citations and quotation omitted). Accordingly, we grant the petition and remand Higueros’s CAT claim for further proceedings consistent with this disposition. *See INS v. Ventura*, 537 U.S. 12, 16-18 (2002).

In light of our disposition, we do address Higueros’s remaining contentions.

**PETITION FOR REVIEW GRANTED; REMANDED.**