

MAR 17 2015

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

SUKHDEV SINGH MANN,

Petitioner,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 13-70002

Agency No. A099-912-319

MEMORANDUM*

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

Submitted March 10, 2015**

Before: FARRIS, WARDLAW, and PAEZ, Circuit Judges.

Sukhdev Singh Mann, a native and citizen of India, petitions for review of the Board of Immigration Appeals’ (“BIA”) order dismissing his appeal from an immigration judge’s decision denying his application for asylum, withholding of removal, and protection under the Convention Against Torture (“CAT”). We have

* 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).

jurisdiction under 8 U.S.C. § 1252. We review for substantial evidence the agency's factual findings, applying the standards governing adverse credibility determinations created by the REAL ID Act. *Shrestha v. Holder*, 590 F.3d 1034, 1039-40 (9th Cir. 2010). We grant the petition for review and remand.

Substantial evidence does not support the BIA's adverse credibility determination, because the alleged inconsistency the BIA relied on is not supported by the record and the "omission" it relied on is not a specific and cogent reason to find Mann not credible under the totality of the circumstances. *See Lai v. Holder*, 773 F.3d 966, 970-976 (9th Cir. 2014); *see also Ren v. Holder*, 648 F.3d 1079, 1089 (9th Cir. 2011) (adverse credibility determination was not supported under the "totality of the circumstances"). Thus, we remand Mann's asylum, withholding of removal, and CAT claims on an open record for further proceedings consistent with this disposition. *See INS v. Ventura*, 537 U.S. 12, 16-18 (2002) (per curiam); *see also Soto-Olarte*, 555 F.3d 1089, 1095-96 (9th Cir. 2009).

PETITION FOR REVIEW GRANTED; REMANDED.