

DEC 14 2015

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MARCO MONTOYA-HERNANDEZ,

Petitioner,

v.

LORETTA E. LYNCH, Attorney General,

Respondent.

No. 15-71169

Agency No. A095-697-941

MEMORANDUM*

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

Submitted December 9, 2015**

Before: WALLACE, RAWLINSON, and IKUTA, Circuit Judges.

Marco Montoya-Hernandez, a native and citizen of Peru, petitions for review of the Board of Immigration Appeals' 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

* 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, *Silaya v. Mukasey*, 524 F.3d 1066, 1070 (9th Cir. 2008), and we deny the petition for review.

Although Montoya-Hernandez raises arguments as to the merits of his withholding of removal claim, he does not challenge the agency's dispositive finding that he is not statutorily eligible for this relief. *See Martinez Serrano v. INS*, 94 F.3d 1256, 1259 (9th Cir. 1996).

Substantial evidence supports the agency's denial of Montoya-Hernandez's CAT claim because he failed to establish it is more likely than not he would be tortured by or with the consent or acquiescence of the government if returned to Peru. *See Silaya*, 524 F.3d at 1073.

PETITION FOR REVIEW DENIED.