

JAN 26 2016

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION  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

NESTOR SANTIAGO MALLARI,

Petitioner,

v.

LORETTA E. LYNCH, Attorney General,

Respondent.

No. 13-73670

Agency No. A086-924-473

MEMORANDUM\*

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

Submitted January 20, 2016\*\*

Before: CANBY, TASHIMA, and NGUYEN, Circuit Judges.

Nestor Santiago Mallari, a native and citizen of the Philippines, petitions for review of the Board of Immigration Appeals' order dismissing his appeal from an immigration judge's ("IJ") decision denying him asylum, withholding of removal, and relief under the Convention Against Torture ("CAT"). Our jurisdiction is

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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).

governed by 8 U.S.C. § 1252. We review de novo questions of law and for substantial evidence factual findings. *Tamang v. Holder*, 598 F.3d 1083, 1088 (9th Cir. 2010). We dismiss in part and deny in part the petition for review.

The agency found that Mallari did not establish changed or extraordinary circumstances to excuse the untimely filing of his asylum application. We lack jurisdiction to review this finding because the underlying facts are disputed. *See Gasparyan v. Holder*, 707 F.3d 1130, 1134 (9th Cir. 2013). Thus, we dismiss the petition as to Mallari's asylum claim.

Substantial evidence supports the agency's determination that Mallari failed to establish that the New People's Army would be motivated to harm him on account of a protected ground. *See INS v. Elias-Zacarias*, 502 U.S. 478, 483 (1992); *see also Ayala v. Holder*, 640 F.3d 1095, 1098 (9th Cir. 2011) (mistreatment motivated by retribution does not bear a nexus to a protected ground). Thus, his withholding of removal claim fails.

Finally, substantial evidence supports the agency's denial of Mallari's CAT claim because he failed to establish that it is more likely than not that he would be tortured by or at the instigation of or with the consent or acquiescence of the government if returned to the Philippines. *See Santos-Lemus v. Mukasey*, 542 F.3d

738, 747-48 (9th Cir. 2008), *abrogated on other grounds by* *Henriquez-Rivas v. Holder*, 707 F.3d 1081 (9th Cir. 2013) (en banc).

**PETITION FOR REVIEW DISMISSED in part and DENIED in part.**