

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

SEP 18 2018

FOR THE NINTH CIRCUIT

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

XING GU,

Petitioner,

v.

JEFFERSON B. SESSIONS III, Attorney
General,

Respondent.

No. 17-73113

Agency No. A205-772-661

MEMORANDUM*

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

Submitted September 12, 2018**

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

Xing Gu, a native and citizen of China, petitions for review of the Board of Immigration Appeals' order dismissing his appeal from an immigration judge's decision denying his application for asylum and withholding of removal. We have jurisdiction under 8 U.S.C. § 1252. We review for substantial evidence the

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

agency's factual findings. *Silaya v. Mukasey*, 524 F.3d 1066, 1070 (9th Cir. 2008).

We deny the petition for review.

The record does not compel the conclusion that Gu established changed or extraordinary circumstances to excuse his untimely asylum application. *See* 8 C.F.R. § 1208.4(a)(4)-(5).

Substantial evidence supports the agency's conclusion that Gu failed to demonstrate that the harm he experienced in China rose to the level of persecution. *See He v. Holder*, 749 F.3d 792, 796 (9th Cir. 2014) (petitioner must show "substantial evidence of further persecution" apart from spouse's forced abortion). Substantial evidence also supports the agency's conclusion that Gu failed to establish that it is more likely than not he will be persecuted if returned to China. *See Hakeem v. INS*, 273 F.3d 812, 816-17 (9th Cir. 2001) (record did not compel conclusion petitioner would more likely than not be persecuted if returned). Thus, Gu's withholding of removal claim fails.

PETITION FOR REVIEW DENIED.