

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JUN 8 2023

FOR THE NINTH CIRCUIT

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

SAM ROFAEL ALTONY,

Petitioner,

v.

MERRICK B. GARLAND, Attorney
General,

Respondent.

No. 22-393

Agency No.
A206-514-259

MEMORANDUM*

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

Submitted June 6, 2023**
Pasadena, California

Before: WALLACE and OWENS, Circuit Judges, and FITZWATER, District
Judge.***

Sam Rofael Altony,¹ a native and citizen of Iraq, petitions for review of
the Board of Immigration Appeals' ("BIA") dismissal of his appeal from 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).

*** The Honorable Sidney A. Fitzwater, United States District Judge
for the Northern District of Texas, sitting by designation.

¹ Altony's true name is Salwan Amer Rafael.

immigration judge's ("IJ") denial of his applications for asylum, withholding of removal, and protection under the Convention Against Torture ("CAT"). The IJ denied Altony's amended applications after finding that he filed a frivolous application given his conviction for making false statements in his earlier application, in violation of 18 U.S.C. § 1546, and determining that he did not fear returning to Germany, where he had received asylum prior to coming to the United States. As the parties are familiar with the facts, we recount here only the facts necessary to our disposition. We have jurisdiction under 8 U.S.C. § 1252 and deny the petition.

Altony raises two arguments on appeal. First, he argues that the IJ failed to give notice about designating Germany as the proposed country of removal. However, Altony's filings to the BIA suggest he did have notice. Second, he contends that the IJ erred by not adjudicating his withholding of removal and CAT claims as to Iraq. But because the government designated only Germany as the proposed country of removal, the IJ did not have to adjudicate Altony's claims regarding Iraq.² *See She v. Holder*, 629 F.3d 958, 965 (9th Cir. 2010) ("[A]n applicant is not entitled to adjudication of an application for withholding of removal to a country that nobody is trying to send them to."), *superseded by statute on other grounds as stated in Ming Dai v. Sessions*, 884 F.3d 858, 868

² Should Iraq ultimately become the proposed country of removal, we expect that, consistent with his decision, the IJ will entertain a motion to consider Altony's applications as to Iraq.

n.8 (9th Cir. 2018), *vacated on other grounds by Garland v. Ming Dai*, 141 S. Ct. 1669, 1674 (2021).

The stay of removal remains in place until the mandate issues.

PETITION DENIED.