

FILED

OCT 01 2007

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

YONGJIAN FAN,

Petitioner,

v.

PETER D. KEISLER,** Acting Attorney
General,

Respondent.

No. 04-75331

Agency No. A95-881-136

MEMORANDUM*

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

Submitted September 24, 2007***

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

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** Peter D. Keisler is substituted for his predecessor, Alberto R. Gonzales, as Acting Attorney General of the United States, pursuant to Fed. R. App. P. 43(c)(2).

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

Yongjian Fan, a native and citizen of China, petitions for review of the Board of Immigration Appeals' ("BIA") order affirming the Immigration Judge's ("IJ") denial of his application for asylum, withholding of removal, and protection under the Convention Against Torture ("CAT"). We have jurisdiction pursuant to 8 U.S.C. § 1252. Where it is unclear whether the BIA conducted a de novo review, we look to the IJ's decision as a guide. *See Avetova-Elisseva v. INS*, 213 F.3d 1192, 1197 (9th Cir. 2000).

We lack jurisdiction to review the IJ's and the BIA's finding on Fan's untimely asylum application because it was based on disputed facts. *See Ramadan v. Gonzales*, 479 F.3d 646, 650 (9th Cir. 2007) (per curiam). Accordingly, we dismiss the petition as to Fan's asylum claim.

Substantial evidence supports the IJ's finding that Fan did not satisfy the standard for withholding of removal. *See Faruk v. Ashcroft*, 378 F.3d 940, 944 (9th Cir. 2004). Substantial evidence also supports the IJ's denial of CAT relief because Fan did not establish that it is more likely than not that he will be tortured if returned to China. *See* 8 C.F.R. § 208.18(a)(2). Accordingly, we deny the petition for review as to Fan's withholding of removal and CAT claims.

PETITION FOR REVIEW DISMISSED in part; DENIED in part.