

**SEP 07 2004**

**NOT FOR PUBLICATION**

UNITED STATES COURT OF APPEALS

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

FOR THE NINTH CIRCUIT

MIROSLAV KOUTZAROV,

Petitioner,

v.

JOHN ASHCROFT, Attorney General,

Respondent.

No. 03-71655

Agency No. A77-584-419

MEMORANDUM\*

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

Submitted August 25, 2004\*\*  
San Francisco, California

Before: SCHROEDER, Chief Judge, GOODWIN, and TASHIMA, Circuit Judges.

Miroslav Koutzarov, a native and citizen of Bulgaria, petitions for review of the Board of Immigration Appeals' affirmance of the denial of his applications for asylum, withholding of removal and relief under the Convention Against Torture.

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\* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

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

The petitioner's due process challenge to the BIA's summary affirmance of the IJ's decision is foreclosed by Falcon Carriche v. Ashcroft, 350 F.3d 845, 849–52 (9th Cir.2003).

The IJ's decision that petitioner lacked well-founded fear of future persecution was grounded upon adverse credibility findings. These findings are fully explained by the IJ and supported by the record. As the IJ observed, the petitioner may well have been subjected to discrimination on the basis of his gypsy ethnicity, but failed to show that the discrimination rose to the level of persecution.

In failing to qualify for asylum, Koutzarov necessarily failed to satisfy the more stringent standard for withholding of removal. See Gonzales-Hernandez v. Ashcroft, 336 F.3d 995 (9th Cir. 2003). Because Koutzarov presented no evidence that it is more likely than not that he would be tortured upon return to Bulgaria, the IJ properly rejected his claim under the Convention Against Torture. See Kamalthas v. INS, 251 F.3d 1279, 1284 (9th Cir. 2001).

The petition for review is DENIED.