

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JUL 01 2008

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

RAHULKUMAR HARIBHAI TANDEL,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney
General,

Respondent.

No. 05-72611

Agency No. A76-336-459

MEMORANDUM*

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

Submitted June 18, 2008**

Before: LEAVY, HAWKINS, and W. FLETCHER, Circuit Judges.

Rahulkumar Haribhai Tandel, a native and citizen of India, petitions for review of the Board of Immigration Appeals' order dismissing his appeal from an immigration judge's decision denying his application for asylum, withholding of

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

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

removal, and protection under the Convention Against Torture (“CAT”). We have jurisdiction pursuant to 8 U.S.C. § 1252. We review for substantial evidence, *Nagoulko v. INS*, 333 F.3d 1012, 1015 (9th Cir. 2003), and we deny the petition for review.

The record does not compel the conclusion that Tandel has shown changed or extraordinary circumstances to excuse the untimely filing of his asylum application. *See Ramadan v. Gonzales*, 479 F.3d 646, 656-57 (9th Cir. 2007) (*per curiam*).

Substantial evidence supports the agency’s finding that the harm Tandel experienced in India did not rise to the level of past persecution. *See Gu v. Gonzales*, 454 F.3d 1014, 1019-21 (9th Cir. 2006). Furthermore, substantial evidence supports the agency’s finding that Tandel failed to establish that it is more likely than not that he will be subject to persecution if returned to India. *See Hoxha v. Ashcroft*, 319 F.3d 1179, 1185 (9th Cir. 2003). We therefore deny the petition with respect to Tandel’s withholding of removal claim.

The agency properly denied CAT relief because Tandel did not establish that it was more likely than not that he will be tortured if returned to India. *See Kohli v. Gonzales*, 473 F.3d 1061, 1071 (9th Cir. 2007).

PETITION FOR REVIEW DENIED.