

FEB 29 2008

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

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

XIAO QING FENG,

Petitioner,

v.

MICHAEL MUKASEY,** Attorney
General of the United States,

Respondent.

No. 04-74163

Agency No. A70-077-607

MEMORANDUM*

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

Argued and Submitted February 13, 2008
San Francisco, California

Before: CANBY, THOMPSON and M. SMITH, Circuit Judges.

Xiao Qing Feng (“Feng”), a native and citizen of China, petitions for review of the Board of Immigration Appeals’ (“BIA”) decision dismissing his appeal from an immigration judge’s (“IJ”) denial of his application for protection under the

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

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

Convention Against Torture (“CAT”).¹ We have jurisdiction pursuant to 8 U.S.C. § 1252. Reviewing for substantial evidence, *Bellout v. Ashcroft*, 363 F.3d 975, 979 (9th Cir. 2004), we deny the petition for review.

Feng failed to establish that it is more likely than not that, if removed to China, he would be tortured. *Al-Saher v. INS*, 268 F.3d 1143, 1147 (9th Cir. 2001). At his initial hearing in 1991, Feng described being arrested for admiring a Western-made car, although the authorities did not tell him why he was arrested. At that hearing, Feng did not indicate that he had ever been tortured. In addition, Feng testified that the only contact he had with the Chinese authorities after the Tiananmen Square massacre was “in regard to taxes.” To avoid being arrested, he did not alert them to his participation in the student movement. The Chinese authorities have not shown any interest in Feng or his whereabouts since 1992.

Feng subsequently testified at the 2003 hearing on his CAT application that he had been arrested in February 1990 because of his political activity and

¹ Feng originally filed an application for asylum and withholding of removal on June 19, 1991. Following a hearing, the IJ denied Feng’s application for asylum and withholding of deportation. On February 1, 1999, the BIA affirmed the IJ’s decision. Feng filed a motion to re-open to have his claims considered under CAT due to a change in the regulations. The BIA granted the motion and remanded to the IJ to have his CAT application considered. Following a hearing, the IJ denied Feng’s application. On July 21, 2004, the BIA affirmed the IJ’s decision. Feng now petitions for review of his CAT application.

involvement in the student movement. He also testified that he was held in jail for fifteen days, mentally tortured, beaten by other prisoners, and was without food for five days.

We consider this evidence along with all other “evidence relevant to the possibility of future torture.” *See Kamalthas v. INS*, 251 F.3d 1279, 1282 (9th Cir. 2001) (quoting 8 C.F.R. § 208.16(c)(3) (2000)). The IJ determined Feng’s later testimony to be inconsistent with his former testimony and to be insufficient to establish that it was more likely than not that, if removed to China, Feng would be tortured.

Because we do not find that the evidence “would *compel* a reasonable finder of fact to reach a contrary result,” we uphold the BIA’s decision dismissing Feng’s appeal. *Monjaraz-Munoz v. INS*, 327 F.3d 892, 895-96 (9th Cir. 2003) (emphasis in original) (citation and internal quotation marks omitted).

Petition for review **DENIED**.