

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

SEP 08 2008

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

ROBERT HASIHOLAN SIMBOLON,
aka Robert Agustinus,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney
General,

Respondent.

No. 05-71209

Agency No. A78-020-378

MEMORANDUM *

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

Submitted August 26, 2008**

Before: SCHROEDER, KLEINFELD, and IKUTA, Circuit Judges.

Robert Hasiholan Simbolon, a native and citizen of Indonesia, petitions for review of the Board of Immigration Appeals' ("BIA") order dismissing his appeal from an immigration judge's decision denying his application for asylum,

* 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).

withholding of removal, and relief under the Convention Against Torture ("CAT"). We have jurisdiction pursuant to 8 U.S.C. § 1252, we review for substantial evidence, *see Singh v. Ashcroft*, 367 F.3d 1139, 1143 (9th Cir. 2004), and we deny the petition for review.

Substantial record evidence supports the agency's conclusion that the mistreatment Simbolon suffered during the May 1998 riots did not rise to the level of persecution, *see Prasad v. INS*, 47 F.3d 336, 339-40 (9th Cir. 1995), and the damage to his farm was not on account of a statutorily protected ground, *see Sangha v. INS*, 103 F.3d 1482, 1486-87 (9th Cir. 1997). Substantial record evidence also supports the conclusion that Simbolon did not establish a well-founded fear of future persecution. *See Lolong v. Gonzales*, 484 F.3d 1173, 1181 (9th Cir. 2007) (en banc) (requiring some evidence of unique risk of persecution distinct from mere membership in disfavored group).

Because Simbolon cannot meet his burden to demonstrate eligibility for asylum, he necessarily fails to meet the more stringent standard for withholding of removal. *See Mansour v. Ashcroft*, 390 F.3d 667, 673 (9th Cir. 2004).

Moreover, substantial evidence supports the BIA's conclusion that Simbolon did not establish it is more likely than not that he will be tortured if returned to

Indonesia, therefore, we uphold the denial of relief under the CAT. *See Malhi v. INS*, 336 F.3d 989, 993 (9th Cir. 2003).

PETITION FOR REVIEW DENIED.