

SEP 10 2008

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>EDMUND SITUMORANG,</p> <p style="text-align: center;">Petitioner,</p> <p>v.</p> <p>MICHAEL B. MUKASEY, Attorney General,</p> <p style="text-align: center;">Respondent.</p>
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No. 05-75371

Agency No. A78-020-207

MEMORANDUM\*

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

Submitted September 8, 2008\*\*

Before: TASHIMA, SILVERMAN, and N.R. SMITH, Circuit Judges.

Edmund Situmorang, a native and citizen of Indonesia, petitions for review of the Board of Immigration Appeals’ order affirming an immigration judge’s (“IJ”) decision denying his application for asylum, withholding of removal, and

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\* 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).

relief under the Convention Against Torture (“CAT”). We have jurisdiction under 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 Situmorang has shown extraordinary or changed circumstances to excuse the untimely filing of his asylum application. *See* 8 C.F.R. § 208.4(a)(4),(5). Accordingly, we deny the petition as to the asylum claim.

Substantial evidence supports the IJ’s denial of withholding of removal. He has not demonstrated past persecution and even if the disfavored group analysis set forth in *Sael v. Ashcroft*, 386 F.3d 922, 927-29 (9th Cir. 2004) applies in the context of withholding of removal, Situmorang has not demonstrated that it is more likely than not that he will be persecuted if he returned to Indonesia. *See Hoxha v. Ashcroft*, 319 F.3d 1179, 1184-85 (9th Cir. 2003).

In his opening brief, Situmorang fails to address, and therefore has waived any challenge to, the IJ’s determination that he is not eligible for CAT relief. *See Martinez-Serrano v. INS*, 94 F.3d 1256, 1259-60 (9th Cir. 1996).

**PETITION FOR REVIEW DENIED.**