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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>MARCO ANTONIO GALDINO,</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. 06-72451

Agency No. A97-375-403

MEMORANDUM*

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

Argued and Submitted May 7, 2008
Portland, Oregon

Before: TALLMAN, CLIFTON, and N.R. SMITH, Circuit Judges.

1. We lack jurisdiction to review the Board of Immigration Appeals' (BIA) decision affirming the Immigration Judge's (IJ) denial of Marco Galdino's (Galdino) untimely asylum application. 8 U.S.C. § 1158(a)(3). Any potential

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

constitutional claims presented by the petition remain unexhausted. 8 U.S.C. § 1252(d)(1). Galdino’s claim that “extraordinary circumstances” justified the untimely asylum application requires us to decide disputed questions of fact. We therefore dismiss this portion of Galdino’s petition. See *Ramadan v. Gonzalez*, 479 F.3d 646, 650-654 (9th Cir. 2007) (per curiam).

2. We deny Galdino’s petition for review of the BIA’s decision affirming the IJ’s denial of Galdino’s application for withholding of removal. Substantial evidence supports the BIA’s and IJ’s findings that Galdino failed to establish a “clear probability of persecution.” See *Halaim v. INS*, 358 F.3d 1128, 1132 (9th Cir. 2004). Galdino failed to establish that it is “more likely than not” that he would be persecuted if forced to return to Brazil. *Popova v. INS*, 273 F.3d 1251, 1260 (9th Cir. 2001). We therefore deny this portion of Galdino’s petition.

3. Substantial evidence supports the BIA’s and the IJ’s denial of relief under CAT. Galdino failed to demonstrate that “it is more likely than not that he . . . would be tortured” with the acquiescence of the Brazilian government. See *Zheng v. Ashcroft*, 332 F.3d 1186, 1194 (9th Cir. 2003) (citations omitted). We therefore deny this portion of Galdino’s petition.

DISMISSED IN PART and DENIED IN PART.