

JAN 18 2008

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

AGHASI ALEKSANYAN,	)	No. 05-74147
	)	
Petitioner,	)	Agency No. A75-759-015
	)	
v.	)	MEMORANDUM*
	)	
MICHAEL B. MUKASEY,**	)	
Attorney General	)	
	)	
Respondent.	)	
_____	)	

Petition to Review an Order of the  
Board of Immigration Appeals

Submitted December 3, 2007\*\*\*

Before: GOODWIN, WALLACE, and FISHER, Circuit Judges.

Aghasi Aleksanyan, an Armenian national, petitions for review of the Board of Immigration Appeals' (BIA) denial of his application for asylum, withholding

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

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

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

of deportation, and protection under the Convention Against Torture.<sup>1</sup> We grant the petition and remand.

We have jurisdiction under 8 U.S.C. § 1252. Due process challenges to immigration decisions are subject to de novo review. *Barron v. Ashcroft*, 358 F.3d 674, 677 (9th Cir. 2004).

Aleksanyan's Fifth Amendment due process violation claim was completely ignored by the BIA. "When a petitioner raises a claim based on a purported procedural defect of the proceedings before the IJ, the *only* administrative entity capable of independently addressing that claim is the BIA." *Montes-Lopez v. Gonzales*, 486 F.3d 1163, 1165 (9th Cir. 2007) (emphasis in original). The BIA erred by failing to consider and decide the claim that the IJ's proceedings were procedurally infirm. *See id.*

**PETITION GRANTED AND REMANDED.**

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<sup>1</sup>United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *adopted* Dec. 10, 1984, Treaty Doc. No. 100-200, 1465 U.N.T.S. 85. The Convention Against Torture is implemented at 8 C.F.R. § 208.18.