

JAN 28 2008

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>ASHOK NARANBHAI PATEL; et al.,</p> <p>Petitioners,</p> <p>v.</p> <p>MICHAEL B. MUKASEY, Attorney General,</p> <p>Respondent.</p>

No. 05-72625

Agency Nos. A95-566-258
A95-566-259
A95-566-260

MEMORANDUM *

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

Submitted January 14, 2008 **

Before: HALL, O’SCANNLAIN and PAEZ, Circuit Judges.

Ashok Naranbhai Patel, his wife Bhavana Ashok Patel, and their son Hardik Ashok Patel, natives and citizens of India, petition for review of the Board of Immigration Appeals’ (“BIA”) decision dismissing their appeal from an

* 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).

Immigration Judge's ("IJ") denial of their application for asylum and withholding of removal, and request for relief under the Convention Against Torture ("CAT"). We have jurisdiction under 8 U.S.C. § 1252, and review for substantial evidence. *Lata v. INS*, 204 F.3d 1241, 1245 (9th Cir. 2000).

The record does not compel the conclusion that petitioners' untimely filing of their asylum application should be excused. *See* 8 C.F.R. § 208.4(a).

Substantial evidence supports the IJ's and BIA's denial of petitioners' withholding of removal claim because the record does not compel the conclusion that Patel was persecuted or has a well-founded fear of future persecution on account of a protected ground. *See INS v. Elias-Zacarias*, 502 U.S. 478, 481-82 (1992).

Petitioners failed to establish a CAT claim because they did not show that it was more likely than not that they would be tortured if they returned to India. *See Nahrvani v. Gonzales*, 399 F.3d 1148, 1154 (9th Cir. 2005).

PETITION FOR REVIEW DENIED.