

**NOT FOR PUBLICATION**

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

**FILED**

MAR 12 2008

CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS

AMANDEEP KAUR,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney  
General,

Respondent.

No. 05-70743

Agency No. A79-369-786

MEMORANDUM\*

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

Argued and Submitted February 5, 2008  
Pasadena, California

Before: GRABER and BERZON, Circuit Judges, and WILKEN,\*\* District Judge.

Amandeep Kaur petitions for review of an order of the Board of Immigration Appeals (“BIA”) dismissing her appeal of an immigration judge’s (“IJ”) decision that denied her applications for asylum, withholding of removal,

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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 Honorable Claudia Wilken, United States District Judge for the Northern District of California, sitting by designation.

and protection under the Convention Against Torture (“CAT”) and ordered her removal to India, her country of citizenship. We conclude that the evidence does not compel the conclusion that Kaur carried her burden of proving either past persecution or a well-founded fear of future persecution, and so we deny the petition for review. *See* 8 U.S.C. § 1101(a)(42)(A); 8 C.F.R. § 208.13(a); *see also Sangha v. INS*, 103 F.3d 1482, 1486 (9th Cir. 1997).

An applicant seeking relief from removal “may establish h[er] case through h[er] own testimony alone,” if that testimony provides “credible, direct, and specific evidence” demonstrating her eligibility. *Sangha*, 103 F.3d at 1487 (internal quotation marks omitted). Although the IJ mentioned credibility concerns regarding Kaur’s testimony, the BIA’s opinion is silent on the issue of credibility. Therefore, we may presume that the BIA found Kaur’s testimony to be truthful. *See Krotova v. Gonzales*, 416 F.3d 1080, 1084 (9th Cir. 2005).

Kaur’s testimony, however, failed to provide “direct[] and specific evidence” of treatment by the police that rises to the level of past persecution. Although Kaur testified that the police “tried to rape me,” this conclusory statement did not establish persecution *per se*. *See Boer-Sedano v. Gonzales*, 418 F.3d 1082, 1088 (9th Cir. 2005) (“Whether particular acts constitute persecution for asylum purposes is a legal question, which we review de novo. We have held

that sexual assault . . . *may* constitute persecution.” (citation omitted; emphasis added)). The only specific facts regarding the attempted rape that Kaur reported are that a police officer, whom Kaur described as “drunk,” “took [her] to his office” and “tor[e] off [her] blouse,” at which point, Kaur said, she “started crying,” after which the officer “slapped me on the face and pulled my hair” and then “left.” These facts do not establish that the treatment Kaur experienced was of comparable severity to those incidents of sexual assault that, in prior cases, we have held constituted persecution. *See, e.g., id.* at 1088 (nine incidents of forced oral sex); *Li v. Ashcroft*, 356 F.3d 1153, 1158 (9th Cir. 2004) (en banc) (forced thirty-minute “pregnancy examination”); *Hernandez-Montiel v. INS*, 225 F.3d 1084, 1097 (9th Cir. 2000) (one incident of forced anal sex and one incident of forced oral sex). The BIA was not compelled to conclude on the facts here that Kaur produced evidence sufficient to establish past persecution.

Because she failed to demonstrate past persecution, Kaur is not entitled to a presumption of a well-founded fear of future persecution. *See Chand v. INS*, 222 F.3d 1066, 1073 (9th Cir. 2000). Without such a presumption, Kaur is required to produce evidence establishing that she has an objectively reasonable fear of future persecution upon her return to India. *See Nagoulko v. INS*, 333 F.3d 1012, 1016 (9th Cir. 2003). The record does not show that, since Kaur’s departure, any of her

similarly situated family members have been detained by the police, nor is there any other evidence that Kaur will be targeted for persecution should she return. The BIA was not compelled, therefore, to conclude that Kaur established an objectively reasonable fear of persecution. *See Hakeem v. INS*, 273 F.3d 812, 816-17 (9th Cir. 2001). Because Kaur failed to establish that she was eligible for asylum, she necessarily failed to establish eligibility for withholding of removal. *See Prasad v. INS*, 47 F.3d 336, 340 (9th Cir. 1995).

Nor did Kaur establish that it is more likely than not that she will be tortured in India. The treatment that she experienced in India did not amount to torture, *Al-Saher v. INS*, 268 F.3d 1143, 1146-47 (9th Cir. 2001), and she produced no evidence that she will be tortured in the future, so the BIA also did not err in concluding that Kaur was not eligible for protection under the CAT, *see Malhi v. INS*, 336 F.3d 989, 993 (9th Cir. 2003).

**PETITION FOR REVIEW DENIED.**