

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

MAR 12 2008

MOLLY DWYER, ACTING CLERK
U.S. COURT OF APPEALS

GEBRIEL DAWIT,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney
General,

Respondent.

Nos. 06-72458

06-74589

Agency No. A97-349-975

MEMORANDUM*

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

Submitted February 26, 2008**

Before: BEEZER, FERNANDEZ, and McKEOWN, Circuit Judges.

In these consolidated petitions, Gebriel Dawit, a native and citizen of Ethiopia, seeks review of the Board of Immigration Appeals' ("BIA") order adopting and affirming the Immigration Judge's ("IJ") order denying his

* 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).

application for asylum, withholding of removal and relief under the Convention Against Torture (“CAT”) and the BIA’s order denying his motion to reopen his removal proceedings and to reconsider its previous order. We have jurisdiction pursuant to 8 U.S.C. § 1252. We review for substantial evidence and will uphold the agency’s decision unless the evidence compels a contrary conclusion. *INS v. Elias-Zacarias*, 502 U.S. 478, 481, 483-84 (1992). We review the denial of a motion to reopen or to reconsider for an abuse of discretion. *See Cano-Merida v. INS*, 311 F.3d 960, 964 (9th Cir. 2002). We deny the petitions for review.

Substantial evidence supports the agency’s adverse credibility determination based on the material inconsistencies between Dawit’s testimony and his affidavit. *See Desta v. Ashcroft*, 365 F.3d 741, 745 (9th Cir. 2004). As the record does not compel the conclusion that Dawit’s testimony was credible, he has not established eligibility for asylum, withholding of removal, or relief under CAT. *See Farah v. Ashcroft*, 348 F.3d 1153, 1156 (9th Cir. 2003).

The BIA did not abuse its discretion in refusing to reopen Dawit’s proceedings on the grounds that the psychological and medical evidence Dawit attached to his motion could have been discovered prior to his hearing, *see* 8 C.F.R. § 1003.2(c)(1); *see also Goel v. Gonzales*, 490 F.3d 735, 738 (9th Cir. 2007) (holding that if evidence was capable of being discovered prior to the

hearing, it cannot serve as the basis for a motion to reopen), and that, in light of the adverse credibility finding, the evidence of changed country conditions in Ethiopia was insufficient to establish a prima facie case for relief, *see Toufighi v. Mukasey*, 510 F.3d 1059, 1066-67 (9th Cir. 2007).

To the extent Dawit was seeking reconsideration, his motion was untimely. *See* 8 C.F.R. § 1003.2(b)(2).

PETITION FOR REVIEW DENIED.