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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>WEIXIN WU,</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. 05-72019

Agency No. A95-301-502

MEMORANDUM*

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

Submitted June 18, 2008**

Before: LEAVY, HAWKINS, and W. FLETCHER, Circuit Judges.

Weixin Wu, a native and citizen of China, petitions *pro se* for review of the Board of Immigration Appeals’ order dismissing his appeal from an immigration judge’s (“IJ”) decision denying his application for asylum, withholding of removal,

* 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).

and protection under the Convention Against Torture (“CAT”). We have jurisdiction pursuant to 8 U.S.C. § 1252. We review for substantial evidence, *Li v. Ashcroft*, 378 F.3d 959, 962 (9th Cir. 2004), and we dismiss in part and deny in part the petition for review.

We lack jurisdiction to review the agency’s determination that Wu failed to timely file his asylum application because the underlying facts are disputed. *Cf. Ramadan v. Gonzales*, 479 F.3d 646, 650 (9th Cir. 2007) (per curiam).

Substantial evidence supports the adverse credibility determination because it is based upon Wu’s unresponsive testimonial demeanor, *see Singh-Kaur v. INS*, 183 F.3d 1147, 1151 (9th Cir. 1999), and Wu’s inconsistent testimony regarding whether he confessed to the police, *see Li*, 378 F.3d at 963. Because the record does not compel the conclusion that Wu’s testimony was credible, he has not established eligibility for withholding of removal. *See Kohli v. Gonzales*, 473 F.3d 1061, 1071-72 (9th Cir. 2007).

Because Wu’s CAT claim is based on the same testimony the IJ found to be not credible, and Wu points to no other evidence the IJ should have considered, he has failed to establish that the record compels a finding of eligibility for CAT relief. *See Farah v. Ashcroft*, 398 F.3d 1153, 1157 (9th Cir. 2003).

PETITION FOR REVIEW DISMISSED in part; DENIED in part.