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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ZHENG XIONG XU, Petitioner, v. MICHAEL B. MUKASEY, Attorney General, Respondent.	No. 05-71101 Agency No. A074-235-103 MEMORANDUM*

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

Submitted December 17, 2008**

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

Zheng Xiong Xu, a native and citizen of China, petitions for review of the Board of Immigration Appeals' ("BIA") order dismissing his appeal from the immigration judge's decision denying his application for asylum and 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.

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

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of removal. Our jurisdiction is governed by 8 U.S.C. § 1252. We review for substantial evidence, *Wang v. Ashcroft*, 341 F.3d 1015, 1019-20 (9th Cir. 2003), and we deny in part and dismiss in part the petition for review.

Substantial evidence supports the agency's denial of asylum because the record does not compel the conclusion that Xu demonstrated eligibility for asylum due to China's family planning practices. *See* 8 U.S.C. § 1101(a)(42)(B).

By failing to qualify for asylum, Xu necessarily fails to satisfy the more stringent standard for withholding of deportation. *See Alvarez-Santos v. INS*, 332 F.3d 1245, 1255 (9th Cir. 2003).

Xu failed to exhaust his ineffective assistance of counsel and due process claims before the BIA, and therefore we dismiss the petition as to these claims. *See Barron v. Ashcroft*, 358 F.3d 674, 676 (9th Cir. 2004).

PETITION FOR REVIEW DENIED in part and DISMISSED in part.