

DEC 30 2008

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ASTGHIK NORIKI VARDANYAN;
ARTYOM KHACHATRYAN,

Petitioners,

v.

MICHAEL B. MUKASEY, Attorney
General,

Respondent.

No. 06-73957

Agency Nos. A096-364-701
A096-364-702

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.

Astghik Noriki Vardanyan and Artyom Khachatryan, natives and citizens of
Armenia, petition for review of the Board of Immigration Appeals' order

* 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. Petr. 34(a)(2).

dismissing their appeal from an immigration judge's decision denying their application for asylum, withholding of removal, and protection under the Convention Against Torture ("CAT"). We have jurisdiction under 8 U.S.C. § 1252. We review for substantial evidence factual findings, *Zehatye v. Gonzales*, 453 F.3d 1182, 1184-85 (9th Cir. 2006), and we deny the petition for review.

Substantial evidence supports the agency's finding of no past persecution because the harms suffered by Vardanyan do not rise to the level of persecution. *See id.* at 1185-86. Even if Vardanyan is a Jehovah's Witness and thus a member of a disfavored group, she has failed to demonstrate the required individualized risk of future persecution in Armenia. *Cf. Sael v. Ashcroft*, 386 F.3d 922, 928 (9th Cir. 2004). Further, petitioners' contention that there is a pattern or practice of persecution against Jehovah's Witnesses in Armenia, is not supported by the record. Therefore, petitioners did not establish eligibility for asylum.

Because Vardanyan failed to establish eligibility for asylum, she necessarily failed to meet the more stringent standard for withholding of removal. *See Zehatye*, 453 F.3d at 1190.

Finally, substantial evidence supports the agency's denial of CAT relief because Vardanyan has failed to show it is more likely than not that she will be

tortured if she returns to Armenia. *See Singh v. Gonzales*, 439 F.3d 1100, 1113 (9th Cir. 2006).

PETITION FOR REVIEW DENIED.