

JAN 20 2009

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>BERTA ZAHARIAN,</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>

No. 04-72547

Agency No. A078-760-116

MEMORANDUM*

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

Submitted January 13, 2009**

Before: O'SCANNLAIN, BYBEE, and CALLAHAN, Circuit Judges.

Berta Zaharian, a citizen of Turkmenistan, petitions for review of the Board of Immigration Appeals' order dismissing her appeal from an immigration judge's ("IJ") decision denying her application for asylum, withholding of removal, and

* 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).

protection under the Convention Against Torture (“CAT”). We have jurisdiction under 8 U.S.C. § 1252. We review factual findings for substantial evidence, *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 detention and harm suffered by Zaharian do not rise to the level of persecution. *See Gu v. Gonzales*, 454 F.3d 1014, 1020 (9th Cir. 2006) (arrest, beating, and three-day detention after which petitioner returned to job as government employee, did not constitute past persecution). Substantial evidence also supports the agency’s determination that Zaharian has not established an objective well-founded fear of future persecution based on her religion because there is no evidence that the government is continuing to look for her and the State Department reports do not indicate that religious minorities in Turkmenistan are subject to persecution. *See Molina-Estrada v. INS*, 293 F.3d 1089, 1096 (9th Cir. 2002).

Because Zaharian 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.

Substantial evidence supports the agency's denial of CAT relief because Zaharian failed to show it is more likely than not that she will be tortured if she returns to Turkmenistan. *See Singh v. Gonzales*, 439 F.3d 1100, 1113 (9th Cir. 2006).

Finally, the record does not support Zaharian's contention that the IJ improperly questioned her concerning her religion, *see Antonio-Cruz v. INS*, 147 F.3d 1129, 1131 (9th Cir. 1998), or improperly relied on Zaharian's lengthy employment to deny relief.

PETITION FOR REVIEW DENIED.