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U.S. COURT OF APPEALS

**NOT FOR PUBLICATION**

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

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| AVINESH PRASAD NATH,<br><br>Petitioner,<br><br>v.<br><br>MICHAEL B. MUKASEY, Attorney General,<br><br>Respondent. | No. 06-72150<br><br>Agency No. A078-650-206<br><br>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.

Avinesh Prasad Nath, a native and citizen of Fiji, petitions for review of the Board of Immigration Appeals' order dismissing his appeal from an immigration judge's decision denying his application for asylum, withholding of removal, and

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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).

relief under the Convention Against Torture ("CAT"). We have jurisdiction under 8 U.S.C. § 1252. We review for substantial evidence, *Marcu v. INS*, 147 F.3d 1078, 1080-81 (9th Cir. 1998), and we deny the petition for review.

Substantial evidence supports the agency's conclusion that country conditions had changed sufficiently to rebut any presumption of a well-founded fear of future persecution that Nath had as an Indo-Fijian in Fiji. *See id*, 147 F.3d at 1081-1082.

Because Nath has not met the standard for asylum, he necessarily cannot meet the more stringent standard for withholding of removal. *See Alvarez-Santos v. INS,* 332 F.3d 1245, 1255 (9th Cir. 2003).

Substantial evidence also supports the agency's conclusion that Nath is ineligible for CAT relief. *See Zhang v. Ashcroft*, 388 F.3d 713, 721-22 (9th Cir. 2004).

We do not consider the country condition information Nath submitted with his opening brief, because it was not part of the administrative record. *See Fisher v. INS*, 79 F.3d 955, 963 (9th Cir. 1996) (en banc). We decline Nath's request that we take judicial notice of changed country conditions in Fiji. *See id.*

**PETITION FOR REVIEW DENIED.**