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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>BATSAIKHAN BATMUNKH,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p>Respondent.</p>

No. 06-72587

Agency No. A096-385-907

MEMORANDUM*

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

Submitted March 18, 2009**

Before: LEAVY, HAWKINS, and TASHIMA, Circuit Judges.

Batsaikhan Batmunkh, a native and citizen of Mongolia, petitions for review of the Board of Immigration Appeals’ order dismissing his appeal from an immigration judge’s (“IJ”) decision denying his application for withholding of

* 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).

removal. We have jurisdiction under 8 U.S.C. § 1252. We review for substantial evidence, *INS v. Elias-Zacarias*, 502 U.S. 478, 481 n.1 (1992), and we deny the petition for review.

Substantial evidence supports the IJ's conclusion that neither the possible withholding of medical treatment to Batmunkh's father, nor Batmunkh's failure to be chosen for the music trip to China occurred on account of a protected ground. *See id.* at 482-84 (concluding that the record did not establish persecution was on account of a protected ground). Furthermore, because Batmunkh left Mongolia to avoid mandatory military service, substantial evidence supports the IJ's conclusion that he did not establish that it is more likely than not that he would be subject to persecution if he returns to Mongolia. *See Zehatye v. Gonzales*, 453 F.3d 1182, 1187 (9th Cir. 2006) (forced conscription or punishment for evasion of military duty generally is not persecution). Accordingly, his withholding of removal claim fails.

PETITION FOR REVIEW DENIED.