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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>VOLODYMYR KUZMENKO,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p>Respondent.</p>
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No. 06-72332

Agency No. A098-157-041

MEMORANDUM\*

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

Submitted April 13, 2009\*\*

Before: GRABER, GOULD, and BEA, Circuit Judges.

Volodymyr Kuzmenko, a native of the former Soviet Union and citizen of the Ukraine, petitions for review of the Board of Immigration Appeals' order dismissing his appeal from an immigration judge's decision denying his

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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).

application for asylum, withholding of removal, and relief under the Convention Against Torture (“CAT”). We have jurisdiction under 8 U.S.C. § 1252. We review for substantial evidence, *Li v. Ashcroft*, 378 F.3d 959, 962 (9th Cir. 2004), and we deny the petition for review.

Substantial evidence supports the agency’s adverse credibility determination because the discrepancies between Kuzmenko’s testimony, his asylum application, and asylum interview statements, regarding his introduction to a Ukrainian journalist and receipt of secret documents, are material and go to the heart of his claim. *See Chebchoub v. INS*, 257 F.3d 1038, 1043 (9th Cir. 2001); *Li*, 378 F.3d at 962-63 (concluding that asylum interview was proper basis of comparison for impeachment). In the absence of credible testimony, Kuzmenko has failed to establish that he is eligible for asylum or withholding of removal. *See Farah v. Ashcroft*, 348 F.3d 1153, 1156 (9th Cir. 2003).

Because Kuzmenko’s CAT claim is based on the testimony the agency found not credible, and he points to no other evidence to show it is more likely than not he would be tortured if returned to the Ukraine, his CAT claim fails. *See id.* at 1157.

**PETITION FOR REVIEW DENIED.**