

APR 27 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

GEORGE MERABIAN,

Petitioner,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 04-76388

Agency No. A077-832-541

MEMORANDUM*

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

Submitted April 23, 2009**
San Francisco, California

Before: TROTT and THOMAS, Circuit Judges, and HOGAN***, District Judge.

George Merabian, a citizen of Georgia, petitions for review of a Board of Immigration Appeals (“BIA”) decision denying his applications for asylum,

* 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).

*** The Honorable Michael R. Hogan, United States District Judge for the District of Oregon, sitting by designation.

withholding of removal and protection under the Convention against Torture (“CAT”). We deny the petition for review. Because the parties are familiar with the factual and procedural history of this case, we will not recount it here.

Substantial evidence supports the BIA’s conclusion that the petitioner had not established eligibility for asylum. See Singh v. I.N.S., 134 F.3d 962, 966 (9th Cir. 1998) (describing standard). Assuming, without deciding, that the attacks on Merabian rose to the level of persecution, the major issue in contention is whether Merabian suffered persecution at the hands of individuals the Georgian government was unwilling or unable to control. Avetova-Elisseva, 213 F.3d 1192, 1196 (9th Cir. 2000). One of the factors we weigh in evaluating persecution caused by non-governmental actors is whether the petitioner reported the incidents to the police. Ornelas-Chavez, 458 F.3d 1052, 1057 (9th Cir. 2006). In order for us to conclude that the government bears some responsibility for persecution where the petitioner did not report the abuse to authorities, the petitioner must provide sufficient evidence to justify not making a report. Id. at 1058. The petitioner must convincingly establish that reporting his abuse to the authorities would have been futile or would have subjected him to further abuse. Id. at 1058. Evidence consisting solely of petitioner’s belief that reporting abuse to the authorities would

be futile is insufficient. Castro-Perez v. Gonzales, 409 F.3d 1069, 1072 (9th Cir. 2005).

In this case, the petitioner did not report the attacks to the police, and there was some evidence in the relevant State Department Country Reports that the Georgian government would have responded to such a report. Although the evidence certainly can be interpreted to support petitioner's theory that the government was incapable or unwilling to control the alleged persecutors, there is sufficient evidence in the record to support the BIA's contrary conclusion under our deferential standard of review.

Petitioner does not contend in briefing the BIA erred with respect to his claims of withholding of removal or CAT protection, so he has waived those issues on appeal. Martinez-Serrano v. INS, 94 F.3d 1256, 1259-60 (9th Cir. 1996).

For these reasons, we deny the petition for review.

PETITION DENIED.