

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

OCT 09 2009

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

RAFED SHAMOUN SOMO,

Petitioner,

v.

ERIC H. HOLDER Jr., Attorney General,

Respondent.

No. 04-72155

Agency No. A079-417-095

MEMORANDUM\*

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

Submitted October 7, 2009\*\*  
Pasadena, California

Before: KLEINFELD and TALLMAN, Circuit Judges, and TRAGER,\*\* District  
Judge.

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\* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

\*\* The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

\*\*\* The Honorable David G. Trager, Senior United States District Judge for the Eastern District of New York, sitting by designation.

Rafed Shamoun Somo, a native and citizen of Iraq, petitions for review of a Board of Immigration Appeals' ("BIA") decision affirming the Immigration Judge's ("IJ") denial of his applications 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, *see Li v. Ashcroft*, 378 F.3d 959, 962 (9th Cir. 2004), and we deny the petition for review.

Substantial evidence supports the BIA's and the IJ's denial of asylum based on an adverse credibility determination. Somo's testimony was materially inconsistent with statements in his application for asylum and in the supplement to his application regarding a matter that goes to the heart of his asylum claim, namely, whether he was beaten by members of the Ba'ath party and the number of altercations he had with the party. *See id.* at 962–63. His testimony was also inconsistent with his asylum application and supplement regarding whether Ba'ath officials had searched his home on multiple occasions.

Because Somo failed to establish eligibility for asylum, he necessarily failed to meet the more stringent standard for withholding of removal. *See Farah v. Ashcroft*, 348 F.3d 1153, 1156 (9th Cir. 2003). Somo's CAT claim also fails because it is based on the same testimony that the BIA and IJ found not credible,

and Somo points to no other evidence that he could claim the BIA and IJ should have considered. *See id.* at 1157.

**PETITION FOR REVIEW DENIED.**