

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

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

EDWARD KIMANI KARANJA;
WINNIE WANGU HUIHU,

Petitioners,

v.

ERIC H. HOLDER Jr., Attorney General,

Respondent.

No. 05-74500

Agency Nos. A077-827-834
A077-827-835

MEMORANDUM*

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

Submitted November 5, 2009**
San Francisco, California

Before: HUG, RYMER and McKEOWN, Circuit Judges.

Edward Karanja, a national and citizen of Kenya, and his wife, Winnie Hiuhu, petition for review of a final order of the Board of Immigration Appeals (BIA) adopting the immigration judge's (IJ) decision denying their application for

* 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).

asylum and withholding of removal under both the Immigration and Nationality Act (INA) and the United Nations Convention Against Torture (CAT). We have jurisdiction pursuant to 8 U.S.C. § 1252(a)(1) and deny the petition for review.

I

The IJ's adverse credibility determination is supported by specific, cogent reasons, *see Gui v. INS*, 280 F.3d 1217, 1225 (9th Cir. 2002), and substantial evidence. Karanja testified that the editor of the magazine for which he worked, and with whom he was arrested, was convicted of treason and served three years; however, this was contradicted by other evidence that the editor was jailed for failing to file financial reports and, more importantly, was sentenced to nine months but served less than a month. Further, Karanja testified that his fingernails were plucked out, whereas his declaration said toenails. Finally, Karanja admitted to submitting a manufactured and fraudulent Democratic Party membership card. He was given an opportunity to explain each inconsistency, but the IJ found he did not do so plausibly. We cannot say the IJ was compelled to find otherwise. Karanja unambiguously referred to the editor's sentence alone – not, as he tried to explain, to a range of sentences that the editor and others received. Regardless of the implement used, and the IJ's interjecting for the record “[s]howing the fingernails,” Karanja conceded there was a discrepancy, reiterated that the harm

was to his fingernails, and offered only a vague explanation for testifying contrary to his declaration. And there is no question he offered a fraudulent document in support of his claim of political persecution. To his credit, Karanja acknowledged this was a mistake, but that does not undermine the IJ's finding. As these unexplained inconsistencies go to the heart of Karanja's claim, the IJ could determine that his testimony was not credible and thus, he is not eligible for asylum. *See de Leon-Barrios v. INS*, 116 F.3d 391, 393 (9th Cir. 1997);¹ *Ceballos-Castillo v. INS*, 904 F.2d 519, 520 (9th Cir. 1990).

Given this determination, Karanja is not entitled to a presumption of future persecution. The record does not compel a finding of well-founded fear of future persecution, or torture for purposes of CAT relief, as both are based on the same testimony found incredible. *See Farah v. Ashcroft*, 348 F.3d 1153, 1175 (9th Cir. 2003). In addition, the IJ found that country conditions have changed, a finding to which no objection is preserved.

¹ Because Karanja's asylum application was filed prior to May 11, 2005, the REAL ID Act, which did away with this circuit's "heart of the claim" rule, *see* 8 U.S.C. § 1158(b)(1)(B)(iii), does not apply. *See Kaur v. Gonzales*, 418 F.3d 1061, 1064 n.1 (9th Cir. 2005).

II

The IJ's treatment of a letter and "reissued" membership card purportedly sent by the Democratic Party of Kenya did not deny Karanja due process or a fair hearing. The IJ gave specific, cogent reasons for evaluating the credibility of these documents. Karanja points to no authority requiring the IJ to subject the "reissued" card to the same forensic examination as his original, fraudulently-manufactured submission.

III

We lack jurisdiction to consider whether the IJ erred by taking administrative notice of Kenya's regime change because Karanja failed to raise it before the BIA. *Ramos v. INS*, 246 F.3d 1264, 1267 (9th Cir. 2001).

PETITION DENIED.