

SEP 22 2010

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FANG HUA,

Petitioner,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 07-74526

Agency No. A098-356-839

MEMORANDUM*

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

Submitted September 13, 2010**

Before: SILVERMAN, CALLAHAN, and N.R. SMITH, Circuit Judges.

Fang Hua, a native and citizen of China, petitions pro se for review of the Board of Immigration Appeals' ("BIA") order dismissing her appeal from an immigration judge's decision denying her application for asylum, withholding of removal, and protection under the Convention Against Torture. We have

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

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

jurisdiction under 8 U.S.C. § 1252. We review for substantial evidence, *Li v. Holder*, 559 F.3d 1096, 1102 (9th Cir. 2009), and we grant and remand the petition for review.

Hua testified she feared persecution because she sheltered two North Korean refugees in her home. The IJ found that Hua feared prosecution and not persecution. The BIA, affirming the IJ, concluded Hua had not established a well-founded fear of persecution on a protected ground. The agency, however, did not have the benefit of our intervening decision in *Li*, 559 F.3d at 1099, in which the court concluded substantial evidence did not support the BIA's finding that the petitioner was a mere criminal subject to prosecution when the petitioner violated no Chinese law, but instead came to the aid of refugees in defiance of China's unofficial policy of discouraging aid to refugees.

Accordingly, we remand to the BIA for further proceedings in light of this disposition. *See INS v. Ventura*, 537 U.S. 12, 16-18 (2002) (per curiam).

PETITION FOR REVIEW GRANTED; REMANDED.