

AUG 16 2012

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

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| <p>GUILLERMO CASTANEDA; et al.,</p> <p>Petitioners,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p>Respondent.</p> |
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No. 10-72420

Agency Nos. A070-500-311
A098-814-549
A072-404-327

MEMORANDUM*

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

Submitted August 8, 2012**

Before: ALARCÓN, BERZON, and IKUTA, Circuit Judges.

Guillermo Castaneda and his family, natives and citizens of Guatemala, petition for review of the Board of Immigration Appeals' order dismissing their appeal from an immigration judge's decision denying their application for asylum, withholding of removal, and protection under the Convention Against Torture

* 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).

(“CAT”). We have jurisdiction under 8 U.S.C. § 1252. We review for substantial evidence, *Zamanov v. Holder*, 649 F.3d 969, 973 (9th Cir. 2011), and we deny the petition for review.

Substantial evidence supports the agency’s adverse credibility determination based on the discrepancies between Castaneda’s declaration and his testimony regarding whether or not he was attacked in 1984 and the number of threatening notes he received, and based on the omission from his declaration of receiving a death threat in Tiquisate. *See id.* (“Material alterations in the applicant’s account of persecution are sufficient to support an adverse credibility finding.”). The agency reasonably rejected Castaneda’s explanations. *See Rivera v. Mukasey*, 508 F.3d 1271, 1275 (9th Cir. 2007). Accordingly, in the absence of credible testimony, Castaneda’s asylum and withholding of removal claims fail. *See Farah v. Ashcroft*, 348 F.3d 1153, 1156 (9th Cir. 2003).

Finally, because Castaneda’s CAT claim is based on the same testimony found to be not credible, and he does not point to any other evidence that shows it is more likely than not that he will be tortured if returned to Guatemala, his CAT claim also fails. *See id.* at 1156-57.

PETITION FOR REVIEW DENIED.

Judge Berzon:

I would instruct, prior to issuing a decision on the merits, that the parties confer with the Ninth Circuit Mediation Office regarding whether they wish to engage in mediation with respect to petitioners Osmar and Christian Castaneda.