

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

DEC 19 2018

FOR THE NINTH CIRCUIT

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

CEMARESTE SAINVILUS, AKA  
Manmandou Bani,

Petitioner,

v.

MATTHEW G. WHITAKER, Acting  
Attorney General,

Respondent.

No. 17-73417

Agency No. A209-875-143

MEMORANDUM\*

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

Submitted December 17, 2018\*\*

Before: WALLACE, SILVERMAN, and McKEOWN, Circuit Judges.

Cemarestes Sainvilus, a native and citizen of Haiti, petitions for review of the Board of Immigration Appeals' ("BIA") order dismissing his appeal from an immigration judge's decision denying his application for asylum, withholding of removal, and relief under the Convention Against Torture ("CAT"). We have

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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 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 the agency's factual findings, applying the standards governing adverse credibility determinations created by the REAL ID Act. *Shrestha v. Holder*, 590 F.3d 1034, 1039-40 (9th Cir. 2010). We deny the petition for review.

Substantial evidence supports the agency's adverse credibility determination based on the inconsistencies between Sainvilus's testimony and declaration as to the circumstances and timing of his brother's murder, and whether the police searched for his brother, and based on inconsistent statements about his reasons for coming to the United States. *See id.* at 1048 (adverse credibility finding reasonable under the totality of the circumstances). Sainvilus's explanations do not compel a contrary conclusion. *See Lata v. INS*, 204 F.3d 1241, 1245 (9th Cir. 2000). In the absence of credible testimony, in this case, Sainvilus's asylum and withholding of removal claims fail. *See Farah v. Ashcroft*, 348 F.3d 1153, 1156 (9th Cir. 2003).

Sainvilus's CAT claim also fails because it is based on the same testimony the agency found not credible, and the record does not otherwise compel the conclusion that it is more likely than not he would be tortured if returned to Haiti. *See id.* at 1156-57.

**PETITION FOR REVIEW DENIED.**