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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

OSCAR ISMELDO ANDURAY-SAGASTUME,

Petitioner,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 08-75174

Agency No. A072-509-660

MEMORANDUM*

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

Submitted April 17, 2012**

Before: LEAVY, PAEZ, and BEA, Circuit Judges.

Oscar Ismeldo Anduray-Sagastume, a native and citizen of Guatemala, petitions for review of the Board of Immigration Appeals' ("BIA") order dismissing his appeal from an immigration judge's decision denying his

* 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).

application for asylum, withholding of removal, relief under the Convention Against Torture (“CAT”), and cancellation of removal. Our jurisdiction is governed by 8 U.S.C. § 1252. We review for substantial evidence factual findings. *Zehatye v. Gonzales*, 453 F.3d 1182, 1184-85 (9th Cir. 2006). We deny in part and dismiss in part the petition for review.

Substantial evidence supports the BIA’s finding that Anduray-Sagastume did not suffer past persecution based on his experiences with the Guatemalan military or with the civil patrol. *See Pedro-Mateo v. INS*, 224 F.3d 1147, 1151 (9th Cir. 2000) (without evidence of a discriminatory purpose, forced conscription into the military is not persecution on account of a protected ground); *Molina-Estrada v. INS*, 293 F.3d 1089, 1094-95 (9th Cir. 2002) (no evidence persecution was motivated by a protected ground). Substantial evidence also supports the BIA’s finding that Anduray-Sagastume did not establish he suffered past persecution through the threats and beating he suffered as a union leader because he failed to demonstrate the government was unable or unwilling to control his attackers. *See Castro-Perez v. Gonzales*, 409 F.3d 1069, 1072 (9th Cir. 2005). Further, the record does not compel the conclusion that Anduray-Sagastume has a well-founded fear of future persecution if he returns to Guatemala. *See Nagoulko*

v. INS, 333 F.3d 1012, 1018 (9th Cir. 2003). Accordingly, Anduray-Sagastume's asylum claim fails.

Because Anduray failed to meet the lower burden of proof for asylum, it follows that he has not met the higher standard for withholding of removal. *See Zehatye*, 453 F.3d at 1190.

In addition, substantial evidence supports the BIA's denial of CAT relief because Anduray-Sagastume failed to establish that it is more likely than not he will be tortured by or with the acquiescence of the government of Guatemala. *See Silaya v. Mukasey*, 524 F.3d 1066, 1073 (9th Cir. 2008).

Finally, we lack jurisdiction to review the agency's discretionary determination that Anduray-Sagastume failed to demonstrate exceptional and extremely unusual hardship to a qualifying relative in support of his application for cancellation of removal. *See Martinez-Rosas v. Gonzales*, 424 F.3d 926, 929-30 (9th Cir. 2005).

PETITION FOR REVIEW DENIED in part; DISMISSED in part.