

DEC 20 2013

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>MUKUNDA BASTAKOTI,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p>Respondent.</p>

No. 11-72983

Agency No. A099-446-764

MEMORANDUM*

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

Submitted December 17, 2013 **

Before: GOODWIN, WALLACE, and GRABER, Circuit Judges.

Mukunda Bastakoti, a native and citizen of Nepal, petitions for review of the Board of Immigration Appeals’ order dismissing his appeal from an immigration judge’s decision denying his application for asylum, withholding of removal, and protection under the Convention Against Torture (“CAT”). We have jurisdiction

* 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).

under 8 U.S.C. § 1252. We review findings of fact for substantial evidence, *see Shrestha v. Holder*, 590 F.3d 1034, 1042-43 (9th Cir. 2010), and we deny the petition for review.

Substantial evidence supports the agency's determination that, even if credible, Bastakoti failed to establish that the threats, attempted extortion, and assault he experienced rose to the level of past persecution. *See Lim v. INS*, 224 F.3d 929, 936 (9th Cir. 2000) ("Our court generally treats unfulfilled threats, without more, as within that category of conduct indicative of a danger of future persecution, rather than as past persecution itself"). Substantial evidence also supports the agency's determination that Bastakoti did not establish a well-founded fear of future persecution. *See Santos-Lemus v. Mukasey*, 542 F.3d 738, 743 (9th Cir. 2008). As a result, Bastakoti's asylum claim fails.

Because Bastakoti 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 v. Gonzales*, 453 F.3d 1182, 1190 (9th Cir. 2006).

Finally, substantial evidence supports the agency's denial of CAT relief, because Bastakoti failed to establish that it is more likely than not that he will be tortured if he returns to Nepal. *See Go v. Holder*, 640 F.3d 1047, 1053-54 (9th Cir. 2011).

PETITION FOR REVIEW DENIED.