

FILED

JUL 31 2020

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ALBERT FROILAN GASMEN  
GAERLAN; ALMA FE FABICULANAN  
GAERLAN; ILICH YEAGER CALICA  
GAERLAN; SEJI KYRA CALICA  
GAERLAN; CAYI KRIEL CALICA  
GAERLAN; JURIS KARREL CALICA  
GAERLAN,

Petitioners,

v.

WILLIAM P. BARR, Attorney General,

Respondent.

No. 17-73311

Agency Nos. A087-860-465  
A087-860-466  
A087-860-467  
A087-860-468  
A087-860-469  
A087-860-470

MEMORANDUM\*

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

Submitted July 29, 2020\*\*

Before: HAWKINS, GRABER, and CLIFTON, Circuit Judges.

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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).

Lead petitioner, Albert Froilan Gaerlan, and his family, natives and citizens of the Philippines, seek review of a 2017 Board of Immigration Appeals' ("BIA") order dismissing an appeal from an order of the Immigration Judge ("IJ") denying their applications for asylum, withholding of removal, and protection under the Convention Against Torture ("CAT"). We deny the petition.

1. The adverse credibility determination was supported by substantial evidence. *Shrestha v. Holder*, 590 F.3d 1034, 1039 (9th Cir. 2010). In his written statement and testimony, Gaerlan claimed that the Director of the National Bureau of Investigation ("NBI"), General Reynaldo Wycoco, ordered him to cease an ongoing investigation into rice hoarding in June and September 2007. Yet the Government submitted into evidence a newspaper article showing that General Wycoco had died on December 19, 2005, more than eighteen months before the events in question, and another individual became Director of the NBI in 2006. Gaerlan declined to continue the hearing so that he could challenge the authenticity of the Government's evidence.

In the absence of credible testimony from Gaerlan, the IJ and BIA permissibly denied his claims for asylum and withholding of removal. Because no evidence apart from his testimony supported the claim for CAT protection, that claim also fails.

2. “[A]n asylum application is frivolous if any of its material elements is deliberately fabricated.” 8 C.F.R. § 1208.20. An element is deliberately fabricated if it involves a “knowing and intentional misrepresentation of the truth.” *Matter of Y-L-*, 24 I. & N. Dec. 151, 156 (BIA 2007). The BIA properly affirmed the IJ’s determination that Gaerlan filed a frivolous asylum application. As discussed above, Gaerlan was found to have submitted false documentary and testimonial evidence. Only after being confronted with the Government’s contradictory evidence did he admit the inaccuracies in his original story.

**PETITION DENIED.**