

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

DEC 9 2020

FOR THE NINTH CIRCUIT

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

FERNANDO BASILIO CRISTOBAL,
AKA Fernando Basilio, AKA Jose
Dominguez-Gonzalez,

Petitioner,

v.

WILLIAM P. BARR, Attorney General,

Respondent.

No. 19-70827

Agency No. A208-308-136

MEMORANDUM*

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

Submitted December 2, 2020**

Before: WALLACE, CLIFTON, and BRESS, Circuit Judges.

Fernando Basilio Cristobal, 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 application for asylum, withholding of removal, and relief under the Convention Against Torture ("CAT"),

* 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).

and denying his motion to remand and terminate proceedings. We have jurisdiction under 8 U.S.C. § 1252. We review factual findings for substantial evidence, 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 review for abuse of discretion the denial of a motion to remand. *Taggar v. Holder*, 736 F.3d 886, 889 (9th Cir. 2013). We deny the petition for review.

Substantial evidence supports the adverse credibility determination based on Basilio Cristobal's demeanor, the omission of past incidents of harm in Guatemala from his asylum application, and implausible testimony as to when Basilio Cristobal first arrived in the United States. *See Shrestha*, 590 F.3d at 1048 (adverse credibility determination reasonable under "the totality of circumstances"). Basilio Cristobal'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, Basilio Cristobal's asylum and withholding of removal claims fail. *See Farah v. Ashcroft*, 348 F.3d 1153, 1156 (9th Cir. 2003). In light of this disposition, we do not reach Basilio Cristobal's remaining contentions concerning those claims. *See Simeonov v. Ashcroft*, 371 F.3d 532, 538 (9th Cir. 2004) ("As a general rule courts and agencies are not required to make findings on

issues the decision of which is unnecessary to the results they reach.” (quoting *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976))).

Substantial evidence also supports the BIA’s denial of CAT relief because, even if credible, Basilio Cristobal failed to show it is more likely than not he will be tortured by or with the consent or acquiescence of the government if returned to Guatemala. *See Aden v. Holder*, 589 F.3d 1040, 1047 (9th Cir. 2009).

The BIA did not abuse its discretion in denying Basilio Cristobal’s motion to remand and terminate proceedings, where his contentions that the immigration judge lacked jurisdiction over his proceedings are foreclosed by *Karingithi v. Whitaker*, 913 F.3d 1158, 1159 (9th Cir. 2019) and *Aguilar Fermin v. Barr*, 958 F.3d 887, 895 (9th Cir. 2020).

As stated in the court’s June 6, 2019 order, the temporary stay of removal remains in place until issuance of the mandate.

PETITION FOR REVIEW DENIED.