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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CARLOS GUILLERMO DE LEON
FIGUEROA,

Petitioner,

v.

MERRICK B. GARLAND, Attorney
General,

Respondent.

No. 22-191

Agency No. A216-434-429

MEMORANDUM*

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

Submitted November 6, 2023**
Pasadena, California

Before: W. FLETCHER and MENDOZA, Circuit Judges, and SCHREIER,
District Judge.

* 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).

*** The Honorable Karen E. Schreier, United States District Judge for the District of South Dakota, sitting by designation.

Petitioner Carlos Guillermo De Leon Figueroa petitions for review of the decision by the Board of Immigration Appeals (“BIA”) dismissing his appeal from the denial of his claims for asylum, withholding of removal, and protection under the Convention Against Torture (“CAT”). We have jurisdiction under 8 U.S.C. § 1252. We affirm.

The Immigration Judge (“IJ”) made an adverse credibility determination based on three factual findings: De Leon Figueroa did not initially mention that he pleaded guilty to driving under the influence when asked about his criminal record; some of De Leon Figueroa’s answers regarding his arrest were evasive and unresponsive; and De Leon Figueroa inaccurately indicated on his asylum application that he had never been arrested or convicted of a crime in the United States. De Leon Figueroa did not challenge the IJ’s adverse credibility determination before the BIA. He therefore failed to exhaust the issue, and we lack jurisdiction to review the adverse credibility finding. *Abebe v. Mukasey*, 554 F.3d 1203, 1208 (9th Cir. 2009) (en banc) (per curiam).

The IJ could properly find De Leon Figueroa’s entire testimony not credible based on its adverse credibility determination. *Li v. Holder*, 738 F.3d 1160, 1163 (9th Cir. 2013). Aside from his testimony, De Leon Figueroa submitted only a report about human rights conditions in Guatemala to support his asylum

application. The BIA correctly determined this evidence did not establish that De Leon Figueroa's fear of persecution was based on a protected ground, as required for his asylum and withholding of removal claims. *See Mukulumbutu v. Barr*, 977 F.3d 924, 927 (9th Cir. 2020). The IJ and BIA also did not err in denying De Leon Figueroa's CAT claim because the evidence did not show that the Guatemalan government would acquiesce in any potential torture.

PETITION DENIED.