



## Harutyunyan v. Gonzales

2007 | Cited 0 times | Ninth Circuit | May 24, 2007

NOT FOR PUBLICATION

MEMORANDUM<sup>1</sup>

Submitted May 16, 2007<sup>2</sup>

Before: PREGERSON, REINHARDT, and TASHIMA, Circuit Judges.

Anahit Harutyunyan, a native and citizen of Armenia, petitions for review of the Board of Immigration Appeals' ("BIA") order adopting and affirming the Immigration Judge's ("IJ") decision denying her applications for asylum, withholding of removal, and protection under the Convention Against Torture ("CAT"). We have jurisdiction pursuant to 8 U.S.C. § 1252. We review for substantial evidence, see *INS v. Elias-Zacarias*, 502 U.S. 478, 481, 483-84 (1992), and we grant in part and deny in part the petition for review.

Substantial evidence does not support the IJ's credibility determination as Harutyunyan was not given an opportunity to explain the discrepancies in her testimony. See *Guo v. Ashcroft*, 361 F.3d 1194, 1200 (9th Cir. 2004).

Moreover, the record compels the conclusion that the harms Harutyunyan suffered on account of her political opinion rise to the level of persecution. See *Lopez v. Ashcroft*, 366 F.3d 799, 803 (9th Cir. 2004) (holding that being tied up and left to die by guerrillas, coupled with death threats amounted to past persecution even if medical treatment was not sought). Because Harutyunyan established past persecution, she is entitled to presumptions of a well-founded fear of future persecution and of eligibility for withholding of removal. See 8 C.F.R. §§ 208.13(b)(1); 208.16(b)(1)(i). Further, because the government has not made any arguments concerning the changed country conditions to rebut the presumption of a well-founded fear of persecution, we decline to remand to give them another opportunity to do so. See *Baballah v. Ashcroft*, 367 F.3d 1067, 1073 n. 11 (9th Cir. 2004). However, because the decision to grant asylum is discretionary we remand for a determination of whether Harutyunyan should be granted asylum. See 8 U.S.C. § 1158(b)(1).

Substantial evidence supports the IJ's conclusion that Harutyunyan did not establish it is more likely than not she would be tortured if returned to Armenia. See *Malhi v. INS*, 336 F.3d 989, 993 (9th Cir. 2003). Therefore, we deny the petition for review as to Harutyunyan's CAT claim.



## Harutyunyan v. Gonzales

2007 | Cited 0 times | Ninth Circuit | May 24, 2007

We remand to the BIA with respect to Harutyunyan's asylum and withholding of removal claims.

PETITION FOR REVIEW GRANTED in part and DENIED in part; REMANDED.

1. This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.
2. The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

