

DEC 28 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

GIOVANNI ALEXANDER PINEDA;
MIRNA GARCIA PINEDA,

Petitioners,

v.

ERIC H. HOLDER Jr., Attorney General,

Respondent.

No. 08-71180

Agency Nos. A098-437-969

A098-437-968

MEMORANDUM*

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

Submitted December 15, 2009**

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

Giovanni Alexander Pineda and Mirna Garcia Pineda, husband and wife and natives and citizens of El Salvador, petition for review of a Board of Immigration Appeals' ("BIA") order dismissing their appeal from an immigration judge's

* 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).

decision denying their application for asylum, withholding of removal and protection under the Convention Against Torture (“CAT”). We have jurisdiction under 8 U.S.C. § 1252. We review de novo questions of law, *Cerezo v. Mukasey*, 512 F.3d 1163, 1166 (9th Cir. 2008), except to the extent that deference is owed to the BIA’s determination of the governing statutes and regulations, *Simeonov v. Ashcroft*, 371 F.3d 532, 535 (9th Cir. 2004). We review factual findings for substantial evidence. *Zehatye v. Gonzales*, 453 F.3d 1182, 1184-85 (9th Cir. 2006). We deny the petition for review.

We reject the Pinedas’ claim that they are eligible for asylum and withholding of removal based on Giovanni Pineda’s membership in a particular social group, namely, young El Salvadorean males retaliated against for refusing to join gangs, or on account of his anti-gang political opinion. *See Santos-Lemus v. Mukasey*, 542 F.3d 738, 745-46 (9th Cir. 2008) (rejecting as a particular social group “young men in El Salvador resisting gang violence”) (internal quotation omitted); *Barrios v. Holder*, 581 F.3d 849, 855-56 (9th Cir. 2009) (refusal to join a gang does not amount to a political opinion).

Accordingly, because the Pinedas failed to demonstrate that they were persecuted or fear persecution on account of a protected ground, we deny the

petition as to the asylum and withholding of removal claims. *See Barrios*, 581 F.3d at 856.

Substantial evidence supports the BIA's denial of CAT relief based on its finding that the Pinedas did not establish a likelihood of torture by, at the instigation of, or with the consent or acquiescence of the El Salvadoran government. *See Zheng v. Ashcroft*, 332 F.3d 1186, 1188 (9th Cir. 2003).

PETITION FOR REVIEW DENIED.