

DEC 27 2010

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

EVELYN ELIZABETH RODRIGUEZ-
BAIRES; et al.,

Petitioners,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 08-73904

Agency Nos. A200-039-486

A200-039-487

MEMORANDUM*

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

Submitted December 14, 2010**

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

Evelyn Elizabeth Rodriguez-Baires and her brother, natives and citizens of El Salvador, petition for review of the Board of Immigration Appeals' ("BIA") order dismissing their appeal from an immigration judge's decision denying their applications for asylum, withholding of removal, and protection under the

* 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).

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 for substantial evidence factual findings, *Zehatye v. Gonzales*, 453 F.3d 1182, 1184-85 (9th Cir. 2006). We deny the petition for review.

Substantial evidence supports the agency’s determination that petitioners did not establish past persecution based on the harassment, threats, and exposure to gang violence they suffered when children in El Salvador. *See Nagoulko v. INS*, 333 F.3d 1012, 1016-17 (9th Cir. 2003). The agency properly considered petitioners’ age at the time the harm occurred. *See Hernandez-Ortiz v. Gonzales*, 496 F.3d 1042, 1045-46 (9th Cir. 2002). We reject petitioners’ claim that they are eligible for asylum and withholding of removal based on their membership in a particular social group, namely, young people who are asked to join gangs but refuse because of their anti-gang sentiments/political beliefs. *See Ramos-Lopez v. Holder*, 563 F.3d 855, 861-62 (9th Cir. 2009) (rejecting as a particular social group “young Honduran men who have been recruited by [a gang], but refuse to join”). We also reject petitioners’ political opinion claim based on their refusal to join gangs. *See Barrios v. Holder*, 581 F.3d 849, 854-56 (9th Cir. 2009) (resistance to

gang recruitment does not constitute political opinion); *see also Parussimova v. Mukasey*, 555 F.3d 734, 740-41 (9th Cir. 2009) (“[t]he Real ID Act requires that a protected ground represent ‘one central reason’ for an asylum applicant’s persecution”). Accordingly, petitioners’ asylum and withholding of removal claims fail. *See Barrios*, 581 F.3d at 856.

Substantial evidence supports the BIA’s denial of CAT relief because petitioners failed to show it is more likely than not they would be tortured by or with the acquiescence of the government if returned to El Salvador. *See Santos-Lemus v. Mukasey*, 542 F.3d 738, 747-48 (9th Cir. 2008).

Petitioners’ due process claim based on the gap in the tape recording of their proceedings fails because they did not demonstrate prejudice. *See Lata v. INS*, 204 F.3d 1241, 1246 (9th Cir. 2000) (requiring prejudice for a petitioner to prevail on a due process claim).

The BIA properly denied petitioners’ ineffective assistance of counsel claim because they did not comply with the requirements set forth in *Matter of Lozada*, 19 I. & N. Dec. 637 (BIA 1988), and the ineffective assistance was not plain on the face of the record. *See Reyes v. Ashcroft*, 358 F.3d 592, 597-99 (9th Cir. 2004).

Finally, we deny petitioners’ request to hold this case in abeyance.

PETITION FOR REVIEW DENIED.