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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>FEDERICO DECIDERIO PEREZ MAYORGA,</p> <p style="text-align: center;">Petitioner,</p> <p style="text-align: center;">v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p style="text-align: center;">Respondent.</p>
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No. 08-72356

Agency No. A072-135-339

MEMORANDUM*

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

Submitted May 24, 2011**

Before: PREGERSON, THOMAS, and PAEZ, Circuit Judges.

Federico Deciderio Perez Mayorga, a native and citizen of Guatemala, petitions for review of the Board of Immigration Appeals’ 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 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).

We have jurisdiction under 8 U.S.C. § 1252. We review for substantial evidence the agency's factual findings, and we review de novo the agency's legal determinations. *Wakkary v. Holder*, 558 F.3d 1049, 1056 (9th Cir. 2009). We deny the petition for review.

Perez Mayorga does not argue he suffered past persecution, rather he contends he fears future persecution from the man who killed his brother. Substantial evidence supports the agency's finding that Perez Mayorga failed to demonstrate an objective basis for a well-founded fear of future persecution because his similarly-situated family members remain unharmed in Guatemala. *See Hakeem v. INS*, 273 F.3d 812, 816 (9th Cir. 2001) (“[a]n applicant's claim of persecution upon return is weakened, even undercut, when similarly-situated family members continue to live in the country without incident”). Accordingly, Perez Mayorga's asylum claim fails.

Because Perez Mayorga failed to meet the lower burden of proof for asylum, his claim for withholding of removal necessarily fails. *See Zehatye v. Gonzales*, 453 F.3d 1182, 1190 (9th Cir. 2006).

Finally, substantial evidence supports the agency's denial of CAT relief because Perez Mayorga failed to show it is more likely than not he will be tortured by or with the consent or acquiescence of government officials if removed to

Guatemala. *See Santos-Lemus v. Mukasey*, 542 F.3d 738, 747-748 (9th Cir. 2008) (petitioner failed to show it was more likely than not he would be tortured, in part, because fear was speculative and family member remained safely in hometown).

PETITION FOR REVIEW DENIED.